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from : General Secretariat of the Council
to : Delegations

Subject : General report on the seminar "Eurojust: navigating the way forward",
Lisbon, 29 and 30 October 2007

Delegations will find enclosed the general report made by Ms Catherine Deboyser, Head of the Legal Service of Eurojust, on the seminar "Eurojust: navigating the way forward" organised by Eurojust, with the support of the Portuguese Presidency, in Lisbon on 29 and 30 October 2007.

General report on the seminar
"Eurojust: navigating the way forward"
Lisbon, 29 and 30 October 2007

Report presented by Catherine Deboyser,
Head of the Legal Service of Eurojust
"Main issues"

The seminar took place in Lisbon on 29 and 30 October 2007. It was organised by Eurojust with the support of the Portuguese Presidency of the EU.

Approximately 170 people took part in the seminar, including:

- members of the Eurojust College representing 26 Member States and the liaison magistrates seconded to Eurojust;
- members of the Eurojust administration;
- many practitioners from the Member States, as well as representatives from the Ministries of Justice of the Member States;
- representatives of the European Parliament, the European Commission (including OLAF), the General Secretariat of the Council, and Europol.

The aim of the seminar was to take stock of the situation and consider the way forward, in the light of the Commission Communication on the role of Eurojust and the European Judicial Network, and the replies to the Eurojust questionnaire on the implementation of the Eurojust Decision¹ (11143/07).

¹ Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63, 6.3.2006, p. 1.

The following recent documents formed the background for discussions at the seminar:

- the Communication from the Commission to the Council and the European Parliament on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the European Union (14253/07);
- the questionnaire sent to members on the implementation of the Eurojust Decision (11143/07) and Member States' replies to it (working documents containing a compilation of the replies and a summary analysing them, drawn up by Eurojust, were provided to participants in the seminar);
- Eurojust's contribution for the European Commission Communication concerning the future of Eurojust and the European Judicial Network (13079/07);
- the EJM Vision Paper drawn up by the European Judicial Network (16444/06); and
- the report of the seminar: “*A Seminar with 2020 Vision: The Future of Eurojust and the European Judicial Network*”, held in Vienna on 25 and 26 September 2006 (14123/06).

The seminar was well-organised and friendly, thanks to the joint efforts of Eurojust staff and the Portuguese Presidency. This warm and lively atmosphere led to fruitful discussions. In the following pages, the aim is to present the main issues identified during the seminar.

These conclusions are under the author's sole responsibility. They have not been adopted by the seminar's participants.

1. IT IS TIME FOR CHANGE

The seminar confirmed that it is time to move on to a new phase in operational coordination and in the support provided to judicial authorities in cases of cross-border crime.

The European Judicial Network has been functioning for almost ten years, and Eurojust began work six years ago. During that time, the context of judicial cooperation has changed:

- the European Union has expanded by twelve new Member States, increasing the European judicial area to an equal extent;
- the legal framework for that area has also changed. The mutual assistance Convention of 2000 (and the Protocol to it of 2001)¹, and above all the fact that mutual recognition has begun to be applied in practice, have profoundly altered the spirit, pace and outcome of judicial cooperation in criminal matters, as shown by the generally very positive use of the European arrest warrant.

Moreover, the Union is also increasingly looking beyond the context of cross-border cases and is intensifying its efforts to develop an integrated European approach to the most serious forms of crime:

- at operational level, the use of joint investigation teams has recently intensified;
- Europol is facing a major review with a complete replacement of its legal framework, which has however already been changed on a number of occasions since 1995;
- strategic capacity is also developing. With the biannual cycles of priorities being defined by the Council on the basis of Europol's analysis of how the threat has materialised in terms of organised crime, the Union is gradually moving towards a consistent European criminal and internal security policy, particularly in the organised crime and terrorism sectors.

¹ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1; Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326, 21.11.2001, p. 2.

Finally, given the prospect of a reform of the Treaties, it is now possible to hope that cooperation in criminal matters will become significantly more dynamic in the near future. The end of the requirements for unanimity in the Council, and the powers conferred on the European Commission to ensure that instruments are implemented, should considerably increase the scope of the instruments adopted. This new framework could apply from the second half of 2009.

Hence, the Union's cooperation in criminal matters has developed considerably since the creation of Eurojust and the European Judicial Network, and will continue to evolve in the near future. Eurojust and the European Judicial Network must be part of these changes, not have them imposed from outside: reform is needed in this respect since although the argument for the establishment of these two bodies holds good, its establishment in practice remains largely imperfect.

To make the best possible use of the formidable potential of Eurojust, which to date has only partially been harnessed, the following changes should be made as a priority:

- A. the status of national members and the capability of national bureaux must be enhanced;
- B. Eurojust's powers must be increased;
- C. the exchange of information must be improved; and
- D. the relationship between Eurojust and the European Judicial Network must be properly coordinated.

A. Enhancing the status of national members and the capabilities of the national bureaux

To ensure that national members are genuinely independent, and to enable them to carry out their tasks in full and in a continuous fashion as the post requires, national members must have:

- a minimum length of term of office;
- the assistance of at least one deputy member; it must also be ensured that Eurojust national bureaux have sufficient staff.

B. Increasing Eurojust's powers

On reading the documents listed above, and following the contributions made and discussions held during the seminar, it seems that the question is not so much whether Eurojust's powers should be increased, but rather how best to ensure that the powers granted by the Eurojust Decision are exercised to the best possible effect, and how to reinforce them. All speakers, at policy level or practitioners, argued in favour of some evolution.

An analysis of the replies to the questionnaire and of discussion during the seminar indicates two main lines of approach, which may be combined.

The first consists of guaranteeing the conditions under which powers are exercised and defining a satisfactory common basis of powers (i.e. equivalent powers) granted to national members in their role as national authorities. The second consists of increasing the powers of the College.

1. Common basis, and increasing the powers of the national members

Firstly, implementation of the Eurojust Decision in the Member States must be as complete and ambitious as possible, so as to ensure that the powers laid down in the Eurojust Decision are exercised in the best possible manner, and that Eurojust acting through the national members is effective.

The contributions made during the seminar, as well as the replies to the questionnaire, also show a near consensus on the need to remedy the diversity of the powers of national members which results from Article 9(3) of the Eurojust Decision. In 2001, when the functioning of Eurojust was still potential rather than actual, this article might have seemed like a good compromise. Five years of experience show that such diversity is harmful to Eurojust's functioning.

Two main obstacles to increasing the powers of the national members were frequently quoted during the seminar and in the replies to the questionnaire:

The first obstacle is linked to the division of tasks between the police, the prosecutor and the judge. The powers of national member, where a common core needs to be defined, are conferred on the national member as national judicial authority, most often as prosecutor and more rarely as judge. For some it is apparently difficult to give this national member powers which are never part of his role at national level. Thus it is not possible to give a national member who is a prosecutor powers which belong to the police (this applies in particular to the Anglo-Saxon countries) or to a judge. And vice versa. As the division of powers between the police, the prosecutor and the judge is not the same in all the Member States, the common core of powers for the national member cannot be completely uniform. Note must be taken of this limitation, which was raised on several occasions during the seminar, and its significance must be kept in perspective. Thus a common core of powers could be defined, while laying down that if, for example, a national member who is a prosecutor is unable to exercise one of these powers because it requires the powers of a judge, he should at least be able to ask a judge to adopt the measure in question. It is in this sense that we might talk of creating a common core of "equivalent powers".

The second obstacle is connected with knowledge of the dossier concerned. Several Member States, replying to the questionnaire, and several seminar participants pointed out that the granting of operational powers to the national member could be problematic, since the national member has less knowledge of all the aspects of the case, particularly its history, than the magistrate in charge at national level. It should therefore be for the latter to take the decisions. This argument is fundamental to the efficiency of investigations and to the relationship of trust between Eurojust and the national level. However, the argument is not convincing. Firstly, we must give up the notion that the national member is isolated in his office in the Hague, taking decisions like some *deus ex machina*, detached from reality. The national member has enough operational experience to know that it is often preferable to let the competent magistrate act. Furthermore, any action by national members takes place in the context of dialogue with the national authorities.

There are also cases where, because the above objection does not apply, the involvement of the national member is called for:

- where the case has not yet been referred to a magistrate at national level;
- where the intervention required is so urgent that it is not possible, even at national level, to wait for the opinion of the magistrate concerned;
- where the national member is taking part in an operational coordination meeting where his national authorities are not present.

The granting of powers must respond to a precise duty which must be precisely defined depending on a criterion of proportionality with the goal being sought.

Several types of function may be performed by the national member in relation to a dossier; they correspond to as many types of powers, which may be defined in the following increasing order of intensity:

(1) Providing impetus

This low-intensity power equates to a support function. It means that the national member can accelerate procedures and unblock situations. This may be done by straightforward contacts or by non-binding requests sent to his colleagues at national level.

This function broadly corresponds to the current level of tasks listed in Article 6 of the Eurojust Decision. Action by national members at this level and the scope of their requests could be reinforced by providing that:

- the national member may transmit any request which seems useful to him (the current list laid down in Article 6(a) of the Eurojust Decision would then provide examples, but not be restrictive);
- the national authorities to which a matter is referred have to give grounds for any refusal to act on it.

(2) Active participation:

This medium-intensity power enables the national member acting alone to take certain steps of a limited scope, and to be actively associated with an investigation at national level. It means that the national member must be able to have easy access to certain information (criminal records, register of investigations, etc.) and to transmit it to his Eurojust counterparts without going via the national judicial authorities (but while keeping them informed). Such a function does not require a change in the "powers" of the national member but does require a strengthening of the rules on access to information and to databases at national level. It would also justify a strengthening of the rule on joint investigation teams: it should be provided that participation by the national member in such teams is, in principle, automatic.

(3) Intervention

This high-intensity power allows the national member to take a one-off measure which is binding in nature. This may for example involve an urgent intervention (authorisation of a controlled delivery). It may also be an intervention at a crucial moment in the procedure: a decision to launch an investigation or to decide that the investigation should be conducted in another Member State.

The aim sought by the granting of such powers is to ensure that investigations and cross-border prosecutions are effective, by ensuring continuity in the exercise of criminal prosecutions. There is no break in the chain of activities undertaken by the criminals trafficking illegally throughout Europe and beyond. We must likewise ensure that there is no break in the chain of judicial decisions that are needed, sometimes urgently, to enable the perpetrators of those crimes and their accomplices to be identified, as well as those who profit from those crimes or are responsible for laundering the proceeds from them, and all those who at whatever distance or stage are part of the criminal organisations gravitating around them; to this end, it must be possible to gather evidence against them (perhaps by catching them red-handed) so that they can be brought before a court and tried.

This power, which has already been conferred on some national members thanks to the discretion offered by Article 9(3) of the Eurojust Decision, needs a change to the current rules so as to define the minimum powers.

(4) Leadership

In exceptional circumstances which would have to be clearly defined, and which would relate to the complexity of the investigation, the seriousness of the offence, and the multilateral nature of the case, the possibility could be considered of transferring the centre of gravity for directing a phase of an investigation in each of the Member States concerned from the national authorities to the national member, so as to take full advantage of Eurojust's resources. This option, to be explored in the future, does not however appear to be favoured at present.

2. *Increasing the powers of the College*

Some one-off changes might be considered, for example:

- strengthening the binding nature of requests made by the College, particularly in the area of conflicts of competence;
- reinforcing Eurojust and Europol, by allowing the College to decide on the opening at Europol of an Analysis Work File (AWF);
- allowing the College to decide on the creation of a joint investigation team: this decision would only concern the decision to set up a team, and could if necessary include coverage of the costs of such a team by the Eurojust budget; the functioning of the team and the measures to be taken in that framework would continue to be dealt with at national level (including the national members, depending on the powers conferred on them); and
- allowing the College to play a role as the channel for transmission of letters rogatory from third countries, where those letters rogatory are addressed to several Member States and require coordination via the national members concerned.

C. Improving the exchange of information

Two remarks need to be made before this subject is addressed.

Firstly, Eurojust is not primarily intended to be an information processing centre: crime analysis is the main task of Europol and not of Eurojust.

Secondly, Eurojust needs a certain mass of information to do its work, and must provide added value in its processing of judicial information.

The unanimous view is that the quantity and quality of information received by Eurojust is currently insufficient to enable it to perform its tasks in full, not only under Articles 6 and 7 of the Eurojust Decision, but also more generally as the only European judicial cooperation body.

The consequences of this fact seem to be broadly accepted.

1. Opening of an AWF

Eurojust must be permitted to benefit fully from Europol's capacities in terms of criminal analysis. Eurojust should be automatically associated with Europol's criminal analysis files. Due grounds must be given for any refusal of this by Europol or by a Member State.

The College should also by one means or another be able to decide that an analysis file should be opened. An amendment to the legal framework to this effect is needed.

2. Access to national information

There must be adequate access to national information. National members must have at least the same access to national information as they would do if they were performing their duties as a judge or prosecutor at national level. Article 9(4) of the Eurojust Decision should be strengthened in this respect.

Discussions during the seminar identified the following sources of information which should be available to every national member: the national criminal records, the criminal records of the other Member States (in the same way as the judicial authorities of that member's State have access), the national register of detainees, and the national register of investigations.

3. Automatic transmission of information to Eurojust:

Certain information should be transmitted automatically to Eurojust, to provide it with an overall view of operational judicial cooperation, and to draw from it added value destined specifically for the judicial authorities. Such transmission is also essential to enable Eurojust fully to take on the other tasks which have been allotted to it: the report to the Council on improvements to be made to European judicial cooperation (pursuant to the second subparagraph of Article 32(1) of the Eurojust Decision), its contribution to the threat analysis carried out by Europol (OCTA), etc).

In some Member States, rules and national procedures have been put in place to ensure that there is an adequate flow of information. However, this is not the case everywhere, and precise rules are therefore needed. They should provide for the transmission to Eurojust of information relating to:

- investigations and prosecutions in cases of major crime involving at least three Member States, or involving two Member States in the case of particularly serious crime (trafficking in human beings, terrorism); launching a joint investigation team (given that the national member should in principle always participate in such teams, see above);
- some key stages of multilateral investigations, particularly the launch of the investigation, and the issue of letters rogatory, European arrest warrants, decisions to freeze assets, etc;

- all refusals to execute a letter rogatory, a European arrest warrant or a decision to freeze assets, insofar as such refusals represent a problem in judicial cooperation; and
- any positive or negative conflict of powers.

These new obligations must be explicitly inserted in the new legal framework.

4. Capabilities:

This is a matter of continuing with work which has already begun.

The secure connection between Eurojust and Europol should soon be operational.

There are three objectives for the future.

- (a) Work must continue to give Eurojust an effective and secure information system, which must be accessible (with adequate access rights and the necessary screening procedures) both within Eurojust in the Hague and at national level (for the Eurojust correspondent and indeed the national Eurojust platform), and which must be capable of processing the information received or generated by Eurojust.
- (b) Work must continue to establish the procedures needed to ensure that the abovementioned information is directly entered in the Eurojust information system at national level, or that it is transmitted to national members in a structured manner so as to ensure that it is properly processed.
- (c) As a component of the Eurojust information system or directly linked to it, there must be a secure telecommunications network for national judicial authorities, primarily the European Judicial Network contact points and the liaison magistrates; work must also continue on the development of IT tools by the European Judicial Network.

In this respect, the existing legal framework which allows the creation of an index, temporary files and a secure telecommunications network already provides the necessary basis.

D. Coordinating the relationship between Eurojust and the European Judicial Network

Discussions revealed a general awareness that the relationship between Eurojust and European Judicial Network is still not working as well as it should.

Several views emerged which are broadly held:

1. The integration of the secretariat of the European Judicial Network into the administration of Eurojust has provided the beginnings of a solution, but
 - this does not resolve the relationship in operational work, i.e. the activity of the European Judicial Network and Eurojust in cases under way, and
 - it is not entirely satisfactory for the functioning of the European Judicial Network.

2. The question of cases in which the national authority should seek the support of Eurojust or rather of the European Judicial Network has not received a satisfactory response. It is not possible to define strict criteria which would make it possible to identify the best solution in every case in accordance with some mechanical formula. The answer is therefore to be found not only in the definition of such criteria, but also in the structuring at national level of the link between Eurojust and the European Judicial Network, so as to provide adequate guidance for the national authority concerned, while respecting the principle of the complementarity of the tasks of the two bodies.

3. It is neither planned nor desirable that one of the structures should absorb the other.

Structural solutions are therefore necessary, involving the clarification and rationalisation of the functioning of the European Judicial Network; giving Eurojust a more solid basis at national level; and the creation of an interface at national level between the vertical structure of Eurojust and the horizontal structure of the European Judicial Network.

1. Rationalisation and clarification of the functioning of the Network

Some improvements would seem to be desirable:

- regarding the choice of contact points: it should be ensured that contact points have the capabilities they need to carry out their tasks, particularly in terms of availability, knowledge of foreign languages and experience. Stricter criteria and an internal control mechanism should make the European Judicial Network more homogenous and increase its effectiveness;
- regarding internal functioning: the existence of a national European Judicial Network coordinator in each Member State should be formalised. This would make it possible both to define the tasks of that coordinator and to formalise the coordinators' meeting. The coordinators' group could then have an important role to play in the internal functioning of the European Judicial Network and be given an active role, with the secretariat of the European Judicial Network, in defining certain approaches within Eurojust which have an impact on the functioning of the European Judicial Network, particularly as regards the budget and the establishment of a telecommunications system between national judicial authorities and between those authorities and Eurojust.

2. Giving Eurojust a more solid basis in each Member State:

This objective would also make it possible to improve the support which Eurojust is able to offer to national authorities.

As a minimum, this could involve making it compulsory to appoint a national Eurojust correspondent in each Member State. The role and functions of the national correspondent should at the same time be defined; the national correspondent could exercise the powers of a national member of Eurojust, and represent Eurojust.

Also, the Eurojust national correspondent could be made a contact point of the European Judicial Network, or even the national coordinator of the European Judicial Network. For the majority of players, it is clear that the function of correspondent and that of contact point for the European Judicial Network intersect.

This could be reinforced if a national Eurojust/European Judicial Network platform were to be created.

3. *Creating an interface between Eurojust and the Network:*

This more ambitious option would both respond to the objectives cited above, and clarify the relationship between the vertical structure which is Eurojust and the horizontal structure of the Network, while respecting the necessary autonomy of the Member States in the organisation of their judicial services.

The Eurojust/European Judicial Network national platform would consist of the Eurojust correspondent and of various European Judicial Network contact points, including the national coordinator of the European Judicial Network if that is not the same person as the Eurojust correspondent. The national platform would also be the ideal rallying point for liaison magistrates, who it sometimes seems difficult to fit into the judicial array.

The platform would have the following tasks:

- promoting strategic coordination of national participation in Eurojust and the European Judicial Network (outside actual cases);
- assisting national authorities in their choice of assistance from Eurojust or the European Judicial Network (or both at once) in the handling of a particular case, or for a phase of a particular case;
- ensuring that information (other than that concerning actual cases being actively monitored by Eurojust) is automatically transferred to Eurojust in a structured manner (via the telecommunications system);
- improving follow-up at national level of requests made by the College or the national member.

It is important to state that the exact composition and organisation of this structure should be left to the discretion of the Member States, who in their decisions on this will take into account the size of the country, its judicial structure, its legal system and its judicial traditions.

It should be pointed out that the creation of this structure does not require its members to be physically gathered together in the same place, but that it could operate via a well thought out telecommunications system and occasional meetings.

It is also vital to stress that this structure would not become the compulsory channel for relations between Eurojust and the national authorities in individual cases.

Nevertheless, the structure's functioning could benefit from European financing via the Eurojust budget.

2. HOW TO BRING ABOUT THIS CHANGE?

The complete, ambitious and harmonious transposition of the Eurojust Decision in all the Member States and the allocation of the resources required by the national bureaux is the first stage of the change needed. This should occur without delay to remedy the main problems, particularly as regards the disparity of status, resources and powers between national members, which jeopardises the effectiveness of the organisation.

However, the scenario of development "on the basis of established law", i.e. based only on practical measures and on strictly national measures, without changes to the existing European legislative framework, is not sufficient. Experience has shown that it is illusory to hope for any real change without the creation of legal obligations for the Member States.

A revision of the legal framework for Eurojust and the European Judicial Network is therefore necessary.

It must address the following priorities:

- A. reinforcing the status of national members and the capabilities of the national bureaux;
- B. strengthening the powers of Eurojust;
- C. improving the transmission of information;
- D. sorting out the relationship between Eurojust and the European Judicial Network.

When this reform is made, it would be desirable for consistency's sake to replace the Eurojust Decision, the Joint Action establishing the Network and the Joint Action on the exchange of liaison magistrates with a new instrument, which would redefine the respective functions of the various bodies and provide for the creation and establishment by the Member States of structures and procedures which ensure that they coordinate at national level.

When the legal framework for the bodies is reviewed, as the structures are being recast, it might be considered appropriate to think about re-balancing resources. Should the administration of Eurojust and the human and technical resources which it provides to the College not also be made available to the Network (as it is already, incompletely, available to the Network's secretariat), and thus complete the structure which has already wisely been started by placing the Network's secretariat within the Eurojust administration?

Finally, advantage should be taken of this legislative reform to rationalise the functioning of the other networks in place. The secretariat for those networks could be transferred to Eurojust and their contact points could be associated with the Eurojust/Network platforms.

3. WHEN?

This review should start soon.

Following the seminar in Vienna on 25 and 26 September 2006, the Vision Paper document of December 2006 from the European Judicial Network, the Eurojust questionnaire and the responses by the Member States, the recent Commission communication and finally the Lisbon seminar, although we have not yet found all the answers, reflection on the future of Eurojust and of the European Judicial Network is sufficiently mature. The game is now in the hands of the European legislator, and the legislative phase should be able to start in the coming months: discussing a text article by article on the basis of a legislative proposal will enable us to shed light on the shadowy areas which remain.

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ANNEX TO THE GENERAL REPORT : POWER POINT PRESENTATIONS OF THE REPORTS ON THE WORKSHOPS

- **Workshops 1 and 2 : Powers of the National members and the College**
- **Workshops 3 and 4 : Exchange of information**
- Workshops 5 and 6 : Interaction between Eurojust national correspondents and the EJNI contact points

Report on Workshop 1:

Powers of the National Members and the College of Eurojust

Chair: Ms Barbara Brezigar

Topic 1: The powers of the National Members

ARTICLE 6

Current situation

The National Members do not use the powers under Article 6 very often mainly because of:

- Scarce information provided for by Member States
- The experience of National Members who didn't retain their judicial powers face the limits of acting under Article 6 especially in urgent cases when decisions on specific investigative measures cannot be taken by them

How to improve Article 6?

The discussions highlighted the following possibilities:

- Through a better implementation of Article 6
- Having a central prosecutorial authority and a national correspondent in order to facilitate the transmission of information to Eurojust.

- National Members present expressed the view that additional powers would be needed and a list of basic powers should be considered

ARTICLE 9 (3)

- Eurojust's casework experience in the past five years shows that judicial powers retained by some National Members are useful and help them to perform their tasks in an effective way.

This view expressed by the National Members present did not meet the consensus of all participants

Topic 2: The powers of the College

ARTICLE 7

Current situation

- The College used the powers under Article 7 in a few cases; according to the experience of the National Members, this power should be used only in complex and sensitive cases.

The way forward

- The College could have a role in solving conflicts of jurisdiction as a mediator, by providing advice to national authorities (no binding decisions).

Topic 3: Supplementary guidelines/manuals etc.

The vast majority of MS did not yet draw up additional supplementary rules to their implementation law regulating the competencies of their NM or College.

- Participants to the workshop didn't feel the need for having specific guidelines but supported the idea of having practical and simple information available on web-sites of prosecutorial offices or ministries of justice of the Member States.

Report on Workshop 2

Powers of the National Members and the College of Eurojust

Chair: Mr Daniel Flore

Topic 1: Intervention of the College

- Intervention to give more legitimacy to the envisaged measure towards the national authority or the victims.
- The possibility of the use of Art. 7 constitutes a pressure both on national authorities and on national members to find a solution.
- If the College could take more binding decisions, national members would have more reasons to bring a case to the College.

Topic 2: Intervention of National members

- In the vast majority of cases, the informal or "diplomatic" way is sufficient because there is the pressure of a possible formal request, although non binding
- For a minority of cases, with the following features:
 - Urgency
 - There is no magistrate yet in charge of the case at local level

Three options were envisaged :

- *Option 1:*
These cases require solutions, including binding powers → this would not imply supranational powers as the national member would act as a national authority
- *Option 2:*
It is preferable to accept that there will be no solution in such cases instead of envisaging binding powers which, when used, will break the link of confidence between the national member and national judicial authorities
→ Eurojust is a young institution

- *Additional option:*

To be explored in any case, would be to work on the permanency of the link between Eurojust and the local level

➤ For standard cases, limited improvements are envisaged, particularly through the definition of equivalent powers for national members (creating a common minimum basis) which could include the capacity to:

- Exchange MLA requests;
- Ensure the follow up of the execution of MLA requests, including by the issuance of supplementary requests; and
- Direct access for each national member to criminal records of all Member States.

Report on Workshop 3:

Exchange of information

Chair: Mr Björn Blomqvist

Topic 1: General issues

- Need to further strengthen the exchange of necessary information with Eurojust
 - When it comes to the exchange of information, every NM should be treated as they were prosecutors in their own MS.
 - All the national laws should set out an obligation in cross border crime cases to provide NM with all information necessary on operational cases, where coordination is required, in the earliest possible stage.
 - There must be a supervision in the national systems to ensure that adequate cases are indeed sent to Eurojust in order to enable Eurojust to provide its assistance.
 - In addition Eurojust should continue making marketing in the MS in order to spread the knowledge of what Eurojust is and what it can provide to national authorities.
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- Currently certain reluctance to exchange classified information with Eurojust
 - Trust is crucial for the exchange of information and in particular the exchange of classified info.
 - Necessity for a common understanding of what is meant by “classified” and of the different levels of classification.
 - Classification of information should not cause an obstacle to the exchange with the NM, but the NM should act as a safeguard and ensure that care is taken of the interests of the providing MS.

Topic 2: Transmission of terrorism related information

- Only a few MS have rules setting out an obligation to exchange terrorism related information with Eurojust;
- Need to fully implement Council Decision 2005 in all MS and to adopt clear rules on the information exchange.
- NM shall take into account the particular sensitivity of terrorism information (see safeguard-function).

Topic 3: Transmission of information on other crimes

- Obligation to inform on other serious cross border crimes exists only in a few MS which the WG recognises as a problem
- Eurojust has a unique position to get an overview of ongoing cross border cases and could provide an added value while detecting linkages. To this end, Eurojust should use the CMS as a tool.

Topic 3: Transmission of information on other crimes

- An obligation to systematically inform Eurojust about other crimes should be included in all national laws for criminality that has been organised and which is set out in Article 32 TEU in order to
 - Act proactively
 - Assist in solving conflicts of jurisdictions and in EAW
 - To help solving ne bis idem problems
 - To ensure that parallel investigations are carried out in a more coordinated way
 - To gather evidences in a way that it is admissible in all MS concerned

Topic 4: Technical issues

- A secure communication is vital for a successful and trustful exchange of information.
- Eurojust should find the best possible ways for a secure communication in close cooperation with the MS. Eurojust should therefore open up a dialogue with the MS.
- NM must have a direct access to all national databases to which national prosecutors and judges have access.

Report on Workshop 4:
Exchange of information

Chair: Mr Hermann von Langsdorff

Topic 1: General issues

- Need to further strengthen the exchange of necessary information with Eurojust
- Set out an obligation in all national laws to exchange info with Eurojust
- Obligation must be made known to practitioners
 - *Guidelines, training on how to forward information in a structured way : e.g. by templates like in terrorist matters*
- Obligation for the MS to supervise
- Obligation for MS to allow NM to have access to all registers like prosecutors/judges
- Obligation to report to Eurojust as soon as a JIT is set up (at the latest)

What kind of information shall be exchanged?

- Need to ensure quality of the information and limit quantity
 - 3 MS at least concerned
 - positive conflict of jurisdiction
 - criminal organisation
 - crime field: Art 4 EJ Decision
 - necessity of coordination
- Exchange in all cases of negative conflicts of jurisdiction

At which stage shall the information be provided?

- As early as possible
- During the whole investigation and prosecution

Classification of information

- Currently certain reluctance to exchange classified information with Eurojust
- Classification of information should not cause an obstacle to the exchange with Eurojust
- The exchange of classified information depends on the national systems
- Eurojust has to build up trust
 - The national authorities have to be informed exactly what Eurojust or the respective NM will do with classified information.
 - The national authorities must have the right to disagree on the sharing of the information with other NM.
 - Screening procedure at Eurojust for staff and NM has to be put in place.

What is Eurojust doing with the information?

- Insert information in CMS to establish linkages;
- Confirm the reception of the information and provide national authorities with a reference number for the temporary work file;
- Discuss with other NM concerned measures to be taken
- Use linkages to pro-actively support MS in criminal proceedings, e.g.
 - organise coordination meetings
 - request to take up investigations or prosecutions

Topic 2: Transmission of terrorism related information

- General remarks also apply to this specific type of information
- Exception concerning the stage the information shall be provided to Eurojust
 - as early as possible - in certain cases after executorial measures have been taken

- Only a few MS have rules setting out an obligation to exchange terrorism related information with Eurojust
- For the moment there is a legal obligation to implement Council Decision 2005 in all MS
- The added value of Council Decision 2005 should be evaluated in respect to the possible duplication of work with Europol

Topic 3: Transmission of information on other crimes

- Obligation to inform Eurojust on other serious border crimes exists only in a few MS
- Such obligation should be included in all national laws for crimes listed in Article 4 of the EJ Decision

Kind of information to be exchanged

- Identity of the suspects
- Rough outline of the facts of the case
- Possible linkages to other MS

Stage when information shall be exchanged

- As early as possible
- During the whole investigation and prosecution

Topic 4: Technical issues

- Need for a secure transfer of information
- System to enable secure transfer of information up to the level “restricted” is currently in development
- The transfer of information of a higher level of classification depends on the national practice

Topic 5: Information Exchange with Eurojust partners

- Eurojust shall be systematically associated to the analytical work files of Europol;
- In event such an association is refused in a specific case, Eurojust shall be notified of the reasons of the refusal

Report on Workshop 5:

Interaction between Eurojust National Correspondents and the EJM Contact Points

Chair: Mr Luis Silva Pereira

Main points of discussion:

- Questions related to the implementation of Article 12 of the Eurojust Decision regarding Eurojust national correspondents
- Should the designation of Eurojust general national correspondents be compulsory?
- Functions and tasks of EJ national correspondents and the EJM contact points for terrorism matters to be clearly defined.
- Compatibility of status, functions, and tasks of the EJM contact points with those of EJ national correspondents.
- Selection of all contact points on the basis of certain criteria e.g. language skills, suitability to dealing with MLA requests.
- Should the designation of a national EJM coordinator be compulsory?
- Reorganisation of EJM contact points

How this should be properly organised e.g. creation of national offices or bureaux comprising the functions of Eurojust national correspondent and a EJM national coordinator

- Necessity of a new legal instrument providing a clear basis for the interaction between EUROJUST, EJM and Liaison Magistrates.

Implementation of Article 12:

A Plus

- “May”
- Absence of a definition of tasks
- Absence of an overall implementation of the Decision

Appointment of National Correspondents

- Very convenient
- A necessity
- Compulsory designation
- Tasks:
 - An interface between National Members and National local authorities,
 - Invested with technical operational powers,
 - Assist judicial authorities in cases related to Eurojust,
 - Assure the regular flow of information to and from the NM
- Several Member States have appointed the same person as Eurojust national correspondent and EJM contact point and their experience shows the system is functioning well.
- This may be a smart link between practitioners. This person could be e.g. A prosecutor who would be in a position to assist in MLA and EAW requests and provide any other legal assistance.
- No incompatibility with the status, functions and tasks of a EJM contact point.
- Several solutions possible that should take into account the special conditions of national judicial organisation and criminal procedural rules in each country.

- Requirements
 - Good knowledge and skills on the judicial cooperation legal instruments, namely, at least on what concerns MLA and EAW;
 - Good language skills

Appointment of national EJM coordinator

- The aim of the European Commission's Communication is to avoid duplication of work and improve the cooperation between EJ and EJM
 - Good coordination required
- Coordinators should be appointed
 - might be more than one person.
- No objection to the fact that a EJM coordinator may be, at the same time, an EJ national correspondent
- No objection to a national bureau which could function like a satellite office to create a closer link at the national level.
- One of the tasks of the coordinating contact point would be to channel the competencies between these two institutions e.g. EJM contact points have a good knowledge on MLA tools and are well-known by their colleagues
- No change on the number of contact points.

Report on Workshop 6

Interaction between Eurojust National Correspondents and the EJM Contact Points

Chair: Ms Elisabeth Pelsez

1. Consensus

- No merger between the European Judicial Network and Eurojust
- Need to retain the special nature of each body
- Like the EJM's characteristics: flexibility, pragmatism, close mutual assistance
- EJM intended to facilitate judicial cooperation

2. Consensus: improved operation of the EJM

- Restriction on the number of contact points without defining their number arbitrarily in a legal instrument (best practice recommendation)
- Need to have a command of foreign languages
- Concrete knowledge of how mutual judicial assistance operates
- Motivation to perform this task
- Need to make contact and facilitate direct relations between magistrates and prosecutors
- Optimum functioning depending on the level of knowledge of contact points (example of plenary meetings)

3. Consensus: relations between the EJM and Eurojust

- EJM contact points are practitioners: they know whether to direct a request for assistance to Eurojust or the EJM (real examples given during the workshop);
- National members also know which cases come within their competence and which must be handled by the EJM.

4. Differences

Depending on the judicial and administrative organisation of the States, various points of view were expressed on

- the Eurojust national correspondent
- the EJM national coordinator
- the national bureau including a Eurojust national correspondent and an EJM coordinator.

Participants in the workshop prefer leaving the choice of how to organise this to the Member States, rather than including it in a legal text.
