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OUTCOME OF PROCEEDINGS

of : Working Party on Cooperation in Criminal Matters
on : 8-9 January 2008

Subject : Draft Council Decision on the strengthening of Eurojust amending Council Decision 2002/187/JHA of 28 February 2002, as amended by Council Decision 2003/659/JHA setting up Eurojust with a view to reinforcing the fight against serious crime
Draft Council Decision on the European Judicial Network

I. INTRODUCTION

On 7 January, 2008 Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal submitted a proposal for a Council Decision on the strengthening of Eurojust amending Council Decision 2002/187/JHA of 28 February 2002, as amended by Council Decision 2003/659/JHA setting up Eurojust with a view to reinforcing the fight against serious crime and a proposal for a Council Decision on the European Judicial Network.

At its meeting of 8 and 9 January 2008, the Working Party on Cooperation in Criminal Matters had a first exchange of views on the draft proposals on the basis a consolidated working document. The present note sets out the main results of the discussions which took place during that meeting. The main objectives of the presented proposals are set out under point II below. General observations by delegations on the proposal are presented under point III below. Concluding remarks are provided under point IV below.

The texts of the proposals are set out in 5037/08 COPEN 1 EUROJUST 1 EJM 1 and in 5039/08 COPEN 3 EUROJUST 3 EJM 3. These texts will undergo jurist/linguists scrutiny.

II. MAIN OBJECTIVES OF THE PROPOSALS

1. The Presidency and other delegations briefly presented the main objectives of the proposal. Since the establishment of the EJM and of Eurojust, the cooperation between the Member States in criminal matters has evolved significantly, while building on the extension of the links between the competent authorities of the Member States. In light of these developments, the objective of the two proposed instruments is to reinforce the role and the capacity of the EJM and Eurojust in judicial cooperation in criminal matters.

The conclusion that there is a need for reinforcing the structures of the EJM and Eurojust in order to ensure their operational efficiency in the years to come results from a thorough reflection based on the experience gathered during the 9 years of operation of the EJM and 5 years of Eurojust.

The main elements of the proposed instrument on Eurojust may be grouped under the following five headings:

1. *Powers of Eurojust National Members.* The divergences of the competences granted by the Member States to their National Members have affected the efficiency of the work of Eurojust. Therefore, the proposal aims at ensuring that the powers of the National Members are equivalent and thus it foresees the creation of a common basis of judicial competences equivalent in all Member States.
2. *Eurojust National Coordination System.* The draft foresees the creation at national level of a coordination system of the work carried out by Eurojust National Correspondents as well as other national players for judicial cooperation. In addition, the Eurojust National Coordination System shall facilitate the communication of information collected at national level to Eurojust.
3. *Transmission of information.* Previous instruments have gradually extended the scope of access to information granted to Eurojust. The present proposal further enhances this competence of Eurojust in order to allow for a greater effectiveness, especially where it comes to finding out relations between cases investigated in different Member States.
4. *Emergency Cell for Coordination.* With a view to ensuring the permanent accessibility and operability of Eurojust in cases of urgency; the instrument proposes the establishment of an emergency coordination entity (ECC).
5. *External relations of Eurojust.* The proposal reinforces the powers of Eurojust in this respect by granting it the possibility, firstly, to send liaison magistrates to Third States and, secondly, to coordinate the execution of requests for legal assistance coming from Third States and addressed to several Member States.

As far as the proposal related to EJM is concerned the objective of this instrument is to replace the existing Joint Action with the Council Decision with a view to reinforcing the role of EJM while preserving its practically oriented application.

2. Further details concerning these proposals are contained in the explanatory note in 5038/08 COPEN 2 EUROJUST 2 EJM 2.

III. GENERAL OBSERVATIONS BY THE DELEGATIONS

1. The Working Party on cooperation in criminal matters examined the above proposals at its meeting on 8 and 9 January 2008. Without prejudice to a further detailed examination of the proposal, the principle objective of the proposed instrument, namely reinforcing the structures of the EJM and Eurojust in order to enhance their efficiency in performing their tasks, met with positive reactions by a large majority of delegations. These delegations agreed that there is a need for legislative action in order to improve the current situation.

However, some delegations expressed the opinion that the necessary improvements and modifications should be made at national and not at European Union's level. These delegations feared that some of the proposed changes may increase the bureaucracy of the system. Two delegations were of the opinion that the discussions should be postponed until the entry into force of the Lisbon Treaty, as it will provide a more solid legal basis for them. One delegation questioned whether there was sufficient legal basis for some proposals.

2. Several delegations entered general scrutiny reservations on the text (DE, FI, HU, IE, LV and UK), some delegations entered parliamentary scrutiny reservations (DK, IE, MT, NL and UK) and some delegations entered scrutiny reservations on specific provisions.
3. In the course of the discussions on the proposal for the Council Decision on Eurojust, the following main points were addressed indicating the issues which, in the opinion of the delegations, should be examined in detail during the future discussions:

- a) A number of delegations underlined that the proposed instrument should be based on the principle identifying the coordinating role of Eurojust. Some delegations questioned whether the proposed text did not go beyond this principle.
- b) A number of delegations recognised that, in order to ensure their operability, it is important that the national members are granted equivalent minimal powers. However, certain concerns in this respect, stemming from the constitutional rules of the Member State or related to the federal structure of the state, were voiced. In addition some delegations were of the opinion that developing the powers of national members may lead to the increase of their obligations and might thus overburden Eurojust national members activity.
- c) Several delegations expressed a positive opinion on the creation at Eurojust of the entity which would, on a permanent basis, ensure coordination in case of urgent requests. The specificity of the operation of this body will be discussed further on the basis of a revised text.
- d) One delegation expressed particular concerns in relation to the obligation set out in Article 2 of the proposal according to which at least one person representing a Member State shall have a permanent place of work at the seat of Eurojust. The delegation pointed to its internal problems with finding relevant human resources as consequential to the small size of the country.
- e) Some delegations expressed a need for further clarification in respect of the influence which the proposed changes may have on the application of the principle of direct contacts between the competent authorities of the Member States in Mutual Legal Assistance. Similarly, it was pointed out that the proposed instrument should not lead to the situation in which Eurojust would replace Member States in their relations with Third States. Eurojust should only have an intermediary role.

- f) The amendment proposed in the Council Decision, which aims at ensuring the availability of information from national data bases to Eurojust was in general welcomed by delegations. However, it was underlined that further discussion will be necessary in order to determine the specific scope and kinds of information to be transmitted as well as the format of transmission.
- g) Delegations were of the opinion that specific attention should be given to the cooperation between Eurojust and Europol. The Presidency ensured that it is also closely following the discussions which take place in relation to the examination of the Commission proposal for a Council Decision establishing the European Police Office (EUROPOL)¹ and recognised that it was necessary to ensure compatibility between the two instruments.
- h) It was underlined that the developments envisaged by the proposed instrument should remain within the existing financial arrangements of the European Union.
- i) In light of the extension of information which shall be provided to Eurojust, some concerns were raised also in relation to the issue of protection of personal data. These issues will be further examined by the experts group.

Further, the Working Party examined in more detail Articles 5a, 9a, 12 and 13. Specific issues raised in relation to these provisions will be indicated in a revised text submitted by the Presidency at a later stage.

4. As far as the proposal for the Council Decision on EJM is concerned the following main remarks were made:

- a) The separation between the EJM and Eurojust was generally welcomed by the delegations. It was underlined that Eurojust should not be perceived as a supervisory body towards EJM.

¹ 5055/07 EUROPOL 2

- b) Some delegations expressed concerns about the modifications to the status of the EJN national contact points. It was questioned whether the new responsibility of the EJN contact points within the structure of the Eurojust National Coordination System will not distract them from their primary role.
- c) Some delegations requested further information concerning the establishment of the secure telecommunication networks. In addition, budgetary implications of this action should also be verified.

IV. CONCLUSIONS

The Presidency took note of the generally positive reception of the proposals by the delegations and stated that it intends to pursue their examination in a prioritized way. Once the first reading of the proposals is completed the Presidency will present to the Working Party a revised draft containing the amendments aiming at addressing the concerns expressed by the delegations and any additional ideas.