

# Understanding Eurojust

## The European Union Agency for Criminal Justice Cooperation

### SUMMARY

In December 2019, Eurojust became the European Union Agency for Criminal Justice Cooperation. The agency aims at fighting serious cross-border crimes by strengthening coordination and cooperation among the competent judicial authorities of the Member States. The agency's most recent activity report shows that criminal activities are increasing despite the restrictions brought about as a result of the coronavirus pandemic. In fact, since the outbreak of the pandemic, the Agency has worked on 3 240 new cases, of which 164 were related to Covid-19. The consistent growth in cases treated by Eurojust in recent years shows the need for cooperation between competent authorities in the Member States and third countries to share information, and receive guidance and support in the fight against serious crimes.

When Eurojust was set up in 2002, the idea was to create a similar and parallel body to Europol, the EU law enforcement agency. In 2009, the Lisbon Treaty, and in particular Article 85 of the Treaty on the Functioning of the European Union (TFEU), opened up new possibilities to further strengthen Eurojust's cooperation and coordination roles. Some academics even argue that it paved the way to move from 'coordination' to 'integration' in criminal justice policy. According to Article 85 TFEU, Eurojust may initiate criminal investigations and propose the launch of criminal prosecutions; and has an enhanced role in coordinating these activities; as well as facilitating judicial cooperation, including by resolving potential conflicts of jurisdiction. Following the entry into force of the new regulation in 2019, the competences of Eurojust are clearly established, and Annex I of the same regulation lists the types of serious crime for which Eurojust is competent. Moreover, the democratic oversight of Eurojust is strengthened, due to regular reporting to the European Parliament and national parliaments.



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## Origin and evolution

The Lisbon Treaty is often considered a milestone in criminal justice policy, because it introduced several changes enabling the EU to strengthen the [mutual recognition](#) of judgments and judicial decisions, the approximation of both substantive and procedural criminal law and, last but not least, introduced new avenues of developments for both Eurojust and the [European Public Prosecutor Office](#) (EPPO). The common rationale behind the changes was to increase cooperation in order to strengthen mutual trust and thus recognition of judicial decisions without proceeding with harmonisation of national legislations. As acknowledged in [Article 82 TFEU](#), EU judicial cooperation in criminal matters shall be based on 'the principle of mutual recognition of judgments and judicial decisions'. Thus, harmonisation – a very lengthy and complex process – would be limited to what is necessary to facilitate mutual recognition in specific areas such as victim rights. This approach was also welcomed by EU Member States because it ensured the autonomy of the national competent authorities, which were left with a wide margin of discretion – for instance, when defining the substantive elements of criminal acts and their corresponding punishment.<sup>1</sup> Notwithstanding these changes, it is worth recalling that in its Article 31(2), the [Treaty of Nice](#) already made it possible for the Council to enable Eurojust to facilitate coordination amongst the national prosecuting authorities of Member States; to promote the role of Eurojust in supporting criminal investigations concerning serious cross-border crimes, and to facilitate close cooperation between Eurojust and the [European Judicial Network](#).

On that basis, in February 2002, the Council adopted Council Decision [2002/187/JHA](#) setting up Eurojust with a view to reinforcing the fight against serious crime. The 2002 Decision was later amended by Council Decisions [2003/659/JHA](#) and [2009/426/JHA](#). The rationale was to set up a similar and parallel body to [Europol](#), known today as the EU law enforcement agency. Commentators<sup>2</sup> also refer to the creation of Eurojust as the result of a political compromise between the need for more effective judicial cooperation in criminal matters, investigation and prosecution on the one side, and national sovereignty and national legal systems, on the other. A case in point would be [Declaration 27](#) to the Treaty of Lisbon,<sup>3</sup> which recalled that the regulations mentioned under Article 85 TFEU (i.e. regulations to determine Eurojust's structure, operation, field of action and tasks) 'should take into account national rules and practices relating to the initiation of criminal investigations'. Nevertheless, the Lisbon Treaty opened up new possibilities and introduced a provision that specifically touches upon crime prevention. In fact [Article 84 TFEU](#) introduced the possibility to adopt measures, via the ordinary legislative procedure, to promote and support Member State action to prevent crimes. [Article 85 TFEU](#) further clarified that Eurojust's mission is 'to support and strengthen coordination and cooperation between national investigating and prosecuting authorities' when serious crimes concern two or more Member States, or else require prosecution on a common basis. The article clearly distinguishes between tasks related to **investigation** and **prosecution**. Article 85 TFEU states in fact that the tasks of Eurojust may include initiating criminal investigations and 'proposing' the initiation of prosecution to the competent national authorities. Notwithstanding this distinction, it is argued that Article 85 TFEU opened the possibility for Eurojust to acquire new powers vis-à-vis national competent authorities<sup>4</sup> and that the possibilities offered by the article have not been fully exploited (see section 'Eurojust: Quo vadis?').

## Recent developments

In December 2019, when Regulation (EU) [2018/1727](#) (hereafter 'the regulation') replaced and repealed Council Decision 2002/187/JHA, Eurojust became the EU Agency for Criminal and Justice Cooperation. Today, 26 Member States are full members. Ireland [decided](#) to opt in to the application of the Eurojust regulation, while Denmark<sup>5</sup> [signed](#) an Agreement on Criminal Justice Cooperation with Eurojust. As a result, Denmark holds observer status, participates in College meetings without voting rights, is bound by European Court of Justice jurisdiction, contributes to the agency budget, has access to Eurojust's information systems and can exchange information and evidence. The main [changes](#) brought about by the new regulation concerned its governance and structure. For

instance, a new Executive Board consisting of six members<sup>6</sup> now assists the College (see section on Eurojust Structure) and the competences of both organs have been clarified. Changes also concerned Eurojust competences and the role of the European Parliament and national parliaments in relation to democratic oversight of Eurojust. Concerning competences, for instance, genocide and war crimes are now included in the list of serious crime for which the agency is competent. The relationship between Eurojust and the recently established [European Public Prosecutor's Office](#) were also clarified. Finally, the data protection regime was aligned to the EU legal framework on data protection, namely Regulation (EU) [2016/680](#) and Regulation (EU) [2018/1725](#). The European Data Protection Supervisor (EDPS) is responsible for ensuring application of EU provisions on personal data and will also advise Eurojust on issues related to the processing of operational personal data (Article 40 of the Regulation). In addition, the Eurojust Executive Board will designate a Data Protection Officer for a four-year term among the staff (Article 36), to ensure that data subjects are informed of their rights, prepare the annual report and liaise with the EDPS (Article 38).<sup>7</sup>

Since the end of 2020, cooperation between the United Kingdom and Eurojust is based on a third-country [model](#) and, for instance, as of 1 January 2021, a UK Liaison Prosecutor was seconded to Eurojust to maintain close cooperation. Moreover, the [Trade and Cooperation Agreement](#) (TCA) states that the EU and the United Kingdom shall ensure that Eurojust and the UK competent authorities cooperate in specific fields of activities (Title VI of Part Three of the TCA), and that working arrangements should be implemented to cover these specific activities. Moreover, the TCA touches upon the Eurojust role in several other provisions, including, but not limited to, the sharing of passenger name record data and surrenders in cases of competing arrest warrants.<sup>8</sup> Requests for mutual legal assistance as well as spontaneous information may also be transmitted via Eurojust.

## Eurojust workload

It is [reported](#) that Eurojust casework increased tenfold – from 202 to 2 550 cases per year – between 2002 and 2017, and cases are expected to rise to 7 000 in 2027. Indeed, in 2018, the number of new and ongoing cases reached more than 6 600, an increase of 19 % compared to the previous year, and in [2019](#) reached a new peak of more than 7 800 cases, again an increase of around 17 % compared to 2018 (out of which 3 892 were new cases and 3 912 cases were carried over from previous years). Finally, in 2020, the agency worked on 8 800 cross-border criminal investigations, an increase of 13 % compared to 2019. Of the 3 809 new cases involving Member States in 2020, Germany (522), Italy (344), France (266), Romania (233) and Hungary (231) were the top five initiating countries involved.<sup>9</sup> In 2020 alone, Eurojust dealt with 1 284 cases involving the [European arrest warrant](#) (EAW), 3 159 cases involving a European Investigation Order and 262 joint investigation teams. The same year, Eurojust action positively impacted the safety of EU citizens as it [contributed](#), inter alia, to the arrest of 2 209 suspects and to the seizure or freezing of criminal assets worth of €1.9 billion. The agency has showed resilience to the new challenges raised by evolving criminal activities in the context of the coronavirus pandemic, not least the action against the production of [fake](#) protective equipment and face masks. In March 2021, Eurojust [concluded](#) a service level agreement (SLA) with the European Union Intellectual Property Office ([EUIPO](#)) to tackle crimes related to intellectual property rights, such as counterfeiting and online piracy.

### Eurojust: Facts and Figures 2020

- €1.9 billion in criminal assets seized and frozen
- €3 billion worth of drugs seized
- 1 284 European arrest warrant cases
- 3 159 Cases with European Investigation Orders
- 262 Joint investigation teams
- 3 367 Mutual legal assistance cases
- 2 209 Arrested and/or surrendered suspects
- 905 Agreements on where to prosecute a suspect
- 1 519 Rapid responses to urgent judicial cooperation requests

Source: Eurojust Annual Report [2020](#).

## Structure

Regulation (EU) [2018/1727](#)<sup>10</sup> transformed Eurojust into the European Union Agency for Criminal Justice. According to its Article 6, the current structure of the agency includes the [national members](#), the [College](#), the [Executive Board](#), and the [Administrative Director](#). Eurojust's **President and two Vice-Presidents** (Article 11) are [elected](#) for a four-year term renewable only once, by the College from among the national members, with a two-thirds vote of its members (provisions are in place if the two-thirds majority cannot be reached after the second round of votes). The same College may dismiss them if they no longer fulfil the required conditions to perform their duties. The President represents the agency, convenes and presides the meeting of both the College and the Executive Board, oversees the daily management of the agency and exercises his/her functions on behalf of the College. The Vice-Presidents replace the President<sup>11</sup> when necessary and, carry out functions entrusted to them by the President. A **national member** per Member State is seconded to Eurojust for a five-year term (renewable once), together with one deputy and one assistant (Article 7). National members and their deputies are appointed based on 'proven high level of relevant, practical experience in the field of criminal justice' (Article 7(6)). They shall be either prosecutors, judges or representatives of the judicial authority with equivalent competences under domestic law (Article 7(4)). Their competences (Article 8) range from facilitating the issuing and execution of requests for mutual assistance and legal recognition, to exchange information with national authorities; from participation in Joint Investigation Teams, to contacting and exchanging information with competent international authorities. The **College** is composed of all national members (Article 10). A Commission representative, who is also member of the Executive Board, and the Administrative Director, are members of the College when it carries management functions, although the Administrative Director has no voting rights. Experts and other persons may be invited as observers.

The College adopts the agency's work programme and annual activity report, its budget, the working arrangements with partners and the [rules of procedure](#) of the agency<sup>12</sup> (Article 5(5)). It works on operational issues and is involved in administrative matters only in respect of ensuring fulfilment of operational matters (Article 5(1)). The **Executive Board** is composed of six people, the President, two Vice-Presidents, one Commission representative and two College members, these latter are nominated on a two-year rotation system. The Executive Board (Article 16) assists the College and is responsible for the administrative decisions necessary for Eurojust to function. This includes adopting an anti-fraud strategy, ensuring a follow up to audit recommendations, reviewing the draft annual budget of the agency to be adopted by the College and nominating a Data Protection Officer amongst the agency staff. The **Administrative Director** (Articles 17 and 18), appointed for a four-year term by the College, is Eurojust's legal representative, ensures its day-to-day work, and implements the decisions of the College and Executive Board. He/she is accountable to the College, which can also remove the Director from office following a proposal by the Executive Board.

## Staff and budget

In 2020, Eurojust had a budget of €41.7 million and its staff included 223 staff members, 22 seconded national experts, 26 national members, plus the President, 60 deputies and assistants.<sup>13</sup>

## Competences

The tasks and competences of Eurojust are defined in Articles 2 and 3 of the regulation respectively. Eurojust's main role is to support coordination and cooperation amongst national investigating and prosecuting authorities in order to tackle 'serious crimes' that affect two or more Member States, or that 'require prosecution on common bases'. The agency operates on the basis of operations conducted and information provided by Member States, Europol, EPPO or the European Anti-Fraud

Office (OLAF). To this end, Eurojust receives requests from Member States and facilitates the executions of requests for cooperation. The agency can work on its own initiative, at the request of the competent authorities of a Member State, or at EPPO's request, in this latter case only within EPPO competences (Article 2(3)). Eurojust competences are defined in relation to the **list of 'serious crimes'** included in Annex I of the Regulation. The list includes, inter alia, [terrorism](#), cybercrime, [organised crime](#), drug trafficking, [migrant smuggling](#), environmental crime, intellectual property crime, corruption, [trafficking of human beings](#), money laundering, genocide and crimes against the humanity. The agency may assist in investigating and prosecuting **crimes outside those listed in Annex I**, if requested by a competent authority in a Member State (Article 3(3)). The agency's competences also cover criminal **acts that are instrumental** to the crimes listed in Annex I, i.e. acts aiming to a) facilitate and commit, b) ensure the impunity of and, c) procure the tools to commit the crimes (Article 3.(4)). The agency is competent to fight crimes against the **financial interests of the EU**, but only in relation to Member States that do not take part in the enhanced cooperation used to establish the [EPPO](#).<sup>14</sup> This privileged relation, which also resulted from a European Parliament [request](#), is laid down in Article 50 of Regulation (EU) [2018/1727](#), which refers to mutual cooperation in full respect of the respective mandate and competences. For instance, sharing of information and mutual support between the two entities is key in cross-border cases. In 2021, Eurojust and EPPO concluded a [working arrangement](#) to define the operational and administrative elements of such cooperation in greater detail.

Eurojust's **operational functions** include, for instance: sharing information, under specific conditions, with the Member States on ongoing investigations and prosecutions; assisting them to ensure coordination of activities and cooperation with EPPO and the European Judicial Network (EJN); and providing Member States with operational, technical, logistical and financial support (Article 4). The agency also plays a role in solving potential conflicts of competences. Should two or more Member States disagree on which Member State should carry out the investigation or the prosecution, the Agency will issue a 'written opinion'. Although non-binding, Member States can refuse to comply with the written opinion in specific cases i.e. to preserve national security, to ensure the success of an ongoing investigation, or to ensure a person's safety. In addition, the agency may also ask competent authorities to carry on investigations or prosecutions, set up Joint Investigation Teams (JITs), provide information and undertake special investigative measures. Some authors<sup>15</sup> argue that, over time, Eurojust has been increasingly seen by national judges, prosecutors and law enforcement officials as a centre of expertise, able not only to support but also to steer the setting up of JITs and coordinated action. To summarise, Eurojust's range of competences and expertise have been progressively extended to cover three main functions: initiative, guidance and monitoring. The initiative function materialises when the agency asks the Member States to carry out investigation and prosecution for certain acts; asks Member States to set up JITs or to take special investigative measures. The

Cases by type of crime, 2020

Crime type	New	Ongoing <sup>1</sup>	Total	Projection <sup>2</sup>
SWINDLING AND FRAUD	1264	1383	2647	▲
MONEY LAUNDERING	595	865	1460	▲
DRUG TRAFFICKING	562	607	1169	▲
MOBILE ORGANISE CRIME GROUPS (MOCG) <sup>3</sup>	380	341	721	▲
TRAFFICKING IN HUMAN BEINGS	163	234	397	▲
CYBERCRIME	174	160	334	▲
CORRUPTION	93	193	286	▲
PIF CRIMES <sup>4</sup>	128	158	286	▲
MIGRANT SMUGGLING	99	118	217	▲
TERRORISM	69	148	217	▲
ENVIRONMENTAL CRIME	20	31	51	▲
CORE INTERNATIONAL CRIMES	12	-	12	▲

<sup>1</sup> As of January 2020.

<sup>2</sup> Projections for 2021-2023 are based on casework trends over the previous five years.

<sup>3</sup> Itinerant criminal networks operates across different Member States, usually specialised in burglary, robbery, and metals theft.

<sup>4</sup> Crimes against the EU financial interests for which Eurojust has competence.

Source: Eurojust [2020](#), Annual Report.

agency exercises a guidance function, for instance, when it issues non-binding opinions to solve conflicts of jurisdiction, or when a national authority requests Eurojust's written opinion on 'recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation' (Article 4.(5)). To enable prosecutors and investigators to overcome legal and practical obstacles, the agency may organise [coordination meetings](#) on its premises. These meetings enable cooperation and are also an occasion for Eurojust to steer the discussion and exercise its leading role thanks to its expertise. The agency has a specific [role](#) in relation to competing European arrest warrants (EAWs). In March 2021, the Agency issued a comprehensive [report](#) covering 55 judgments of the Court of Justice of the European Union, between 2007 and 2021, on the application of Framework Decision [2002/584/JHA](#) (EAW Decision).

The agency monitors Member States' procedures and practices, a function which enables it to identify potential gaps and problems. For instance, national competent authorities are requested to inform Eurojust, through their national members, of the setting up of JITs and of cases falling under the agency's remit involving at least three Member States and for which requests for cooperation have been sent to two Member States. Eurojust therefore functions as a centre of expertise, which might be also relevant in relation to EU legislative procedure. In fact, the agency may be requested by the European Commission or by the Member States to provide its opinion on legislative proposals put forward according to [Article 76 TFEU](#) (Article 68).

## Joint Investigation Teams (JITs)

Joint Investigation [Teams](#) are a tool enabling cooperation between Member States' judicial and law enforcement authorities, are limited in time – usually between 12 and 24 months – and aim at pursuing a specific objective, such as collecting evidence. In 2020, Eurojust supported 262 JITs,<sup>16</sup> either financially or operationally, with the purpose of combatting many different types of crime, and in particular related to extortion and fraud, drug trafficking and money laundering. In 2020, a budget of €1.46 million was available to cover translation and interpretation or travel costs, in addition to the possibility for the agency to loan equipment. Eurojust experienced growing third country involvement in JITs and contributed to custom agreements for specific types of crimes, such as [migrant smuggling](#) and cybercrime. The constantly increasing number of JITs is considered by some<sup>17</sup> as an indicator of the national competent authorities' perception of the agency as the EU centre of expertise in criminal justice.

## Coordination centres

Eurojust also operates through coordination centres, which are judicial [tools](#) created to enable the exchange of information and coordination of action, when so required, in carrying out investigative measures in different Member States. This may include arrest of suspect individuals, house and other location searches; asset seizures and freezing, as well as hearings of suspects or witnesses. In September 2019, Eurojust marked the anniversary of [100 action](#) days coordinated by the agency since 2011. During that time, this resulted inter alia in the seizure of assets worth €210 million, 1 722 arrests and 3 355 house searches.

## What is a serious crime?

There is no legal definition of 'serious crime' in either EU primary nor secondary law. [Article 85 TFEU](#) and Article 2 of Regulation (EU) [2018/1727](#) refer to **serious crime affecting two or more Member States or requiring a prosecution on common bases**. Article [83 TFEU](#) refers to serious crimes with a cross-border dimension resulting from their nature, from their impact, or 'from a special need to combat them on a common basis'. Article 83 TFEU also identifies a non-exhaustive list of serious crimes<sup>18</sup> and envisages the [possibility](#) to add other serious crimes (i.e. Council unanimity with European Parliament consent). Regulation (EU) [2018/1727](#) neither provides for a definition of serious crimes, nor of crimes 'requiring prosecution on common basis', although it does provide for a list of serious crimes in its Annex I.<sup>19</sup> Moreover, the regulation also refers to investigations and

prosecutions affecting one Member State and a third country where there is an agreement with this specific third country, and where the competent authority of the Member State requires Eurojust to assist (Article 3(5)). It also envisages the possibility for Eurojust to become involved should a Member State or the European Commission request, when a case in one Member State has repercussions at EU level (Article 3(6)). Nevertheless, room for further clarification remains and commentators have attempted to shed light on the process.<sup>20</sup> It is argued, for instance, that situations might arise where common EU action is required to protect EU interests; crimes might be committed in one Member State that are linked to other cases and deserving of examination at EU level, or cases that, although not cross-border in nature, deserve common action to achieve a broader objective. Ultimately, the rationale seems to be the need for collective action to respond to serious crimes with a cross-border dimension, likely to create externalities affecting two or more Member States, and that could not be effectively addressed by a Member State alone.

Similar questions were raised when the European Commission proposal to reform Eurojust was discussed in Council. In April 2014, Michèle Coninx, then-President of Eurojust, submitted her [contribution](#) to the Working Party on Cooperation in Criminal Matters and specifically mentioned that: 'While it is true that the wording "serious crime requiring a prosecution on common bases" has already been established in Article 85(1) TFEU, it would seem necessary to explain how this term should be understood'. A 2014 [study](#) commissioned by the European Parliament looked at both Member States' domestic criminal law and EU criminal law in search of a legal definition of 'serious crimes'. At EU level, the authors looked at the criteria that would help to identify the crimes legitimately falling under the remit of EU criminal justice in addition to the list provided for in Article 83 TFEU. According to the authors, this could include offences of which the EU is a victim, offences for which the EU is better placed to protect the victims than its Member States, or for which the EU has the moral obligation to intervene.<sup>21</sup>

## Cooperation with other EU actors

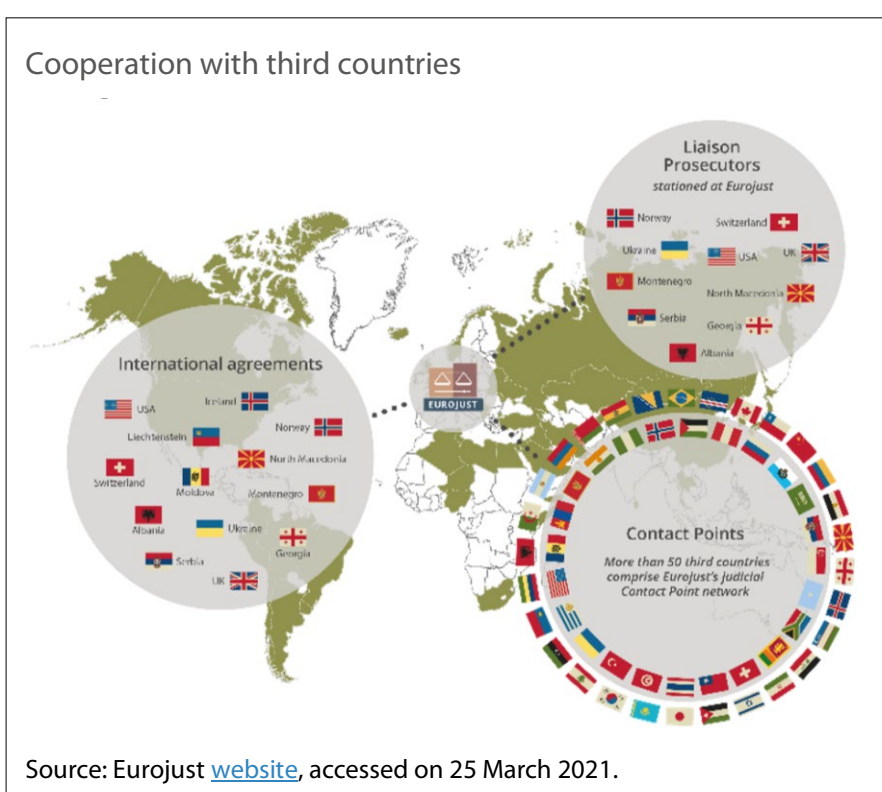
In addition to its cooperation with the EPPO (Article 50), Eurojust operates to strengthen mutual assistance and cooperation with a broad range of EU actors, including the [European Judicial Network](#) (Article 48), [Europol](#) (Article 49), the [European Judicial Training Network](#) (Article 51.(1)), the European Anti-Fraud Office ([OLAF](#)), and the European Board and Cost Guard Agency/[Frontex](#) (Article 51.(3)). In particular, Eurojust has built a fruitful cooperation over the years with Europol, the EU agency for law enforcement cooperation, to fight serious cross-border crimes efficiently and avoid overlaps and duplication.<sup>22</sup> For example, a first cooperation [agreement](#) was concluded in 2010, and two [agreements](#) were later concluded to allow for a temporary placement of Eurojust staff members with the EU Cybercrime Centre and the EU Counter-Terrorism Centre, both hosted by Europol. Most recently, in 2018, a Memorandum of Understanding ([MoU](#)) was signed to support Joint Investigation Teams. The President of Eurojust also meets on regular basis with the Executive Director of Europol (Article 49 (5)) and the European Chief Prosecutor (Article 50 (1)).

### European Judicial Network (EJN)

The European Judicial Network (EJN) is a network of national Contact Points that aims at facilitating judicial cooperation in criminal matters. It was created in 1998, in response to the Council [action plan](#) to combat organised crime of 28 April 1997. Its recommendation n°21 requested that Member States set up a network of practitioners with extensive experience in fighting organised crime, notwithstanding the different national legal systems and the need to safeguard judicial independence. In 2008, Council Decision [2008/976/JHA](#) confirmed the need to strengthen judicial cooperation between Member States, to maintain the EJN and, to further clarify its relationship with Eurojust. This decision specified that the operation of the EJN will be structured around three main key areas: facilitate contacts between Member States, organise periodic meetings with Member State representatives, and provide a constant flow of up-to-date background information – the ultimate objective being to facilitate judicial cooperation in criminal matters by providing legal and practical information related to judicial cooperation. In 2019, Eurojust and the EJN published a joint [report](#) to clarify whether a case should be transmitted to Eurojust or to the EJN. The Secretariat of the EJN supports the functioning of the EJN and its relation with Eurojust and is located with Eurojust in The Hague.

## Cooperation between Eurojust and third countries

Eurojust can cooperate with competent authorities in third countries and international organisations. In order to do so, every four years Eurojust, in consultation with the European Commission, prepares a cooperation strategy, which includes the list of countries as well as international organisations for which an operational need for cooperation has been identified (Article 52). The **international agreements for cooperation** are then **concluded** by the Council (Article 218 TFEU) following a European Commission recommendation and negotiations.<sup>23</sup> To date, Eurojust has **concluded** 12 cooperation agreements in total, with Albania, Georgia,



Iceland, Liechtenstein, Moldova, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine and the United States. The Eurojust single programming document for [2021-2023](#) mentions that priority third countries are identified, inter alia, based on current casework. The document makes a distinction between those countries for which there is a pressing need for cooperation and countries for which cooperation would be advantageous. The same document identifies Algeria, Argentina, Bosnia and Herzegovina, Colombia, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey, as priority third countries.<sup>24</sup> In November 2020, the European Commission [recommended](#) that the Council open the negotiations in order to conclude international agreements for cooperation between Eurojust and 10 third countries (Algeria, Armenia, Bosnia and Herzegovina, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey). The list was further expanded by the Council to include: Argentina, Brazil and Colombia. In March 2021, the Council [approved](#) the mandate for the Commission to open negotiations between Eurojust and 13 third countries. Cooperation with the United Kingdom remains a priority and in January 2021, Eurojust published a non-binding [note](#) addressed to practitioners and competent authorities, providing a clear and simple overview of the main changes in judicial cooperation in criminal matters between the EU and the United Kingdom as of 1 January 2021.

Third countries may post a Liaison Prosecutor ([LP](#)) to Eurojust in support of cross-border investigations when the specific country is involved. At the time of writing, [10 countries](#) have posted a LP to Eurojust: Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United States and the United Kingdom.<sup>25</sup> Moreover, to further strengthen operational cooperation, in agreement with the concerned country, Eurojust may designate a **contact point** in a third country (Article 52(3)). The work in this field is in constant evolution – in 2020, the number of contact points reached 55, including Uzbekistan, Sri Lanka, Mexico and Kosovo. It is reported that, in 2020, Eurojust saw the involvement of non-EU countries in 805 new cases. The United Kingdom (434), Switzerland (132), Serbia (60) and the Ukraine (40) were the countries most concerned.<sup>26</sup> Under certain conditions (e.g. with the prior consent of the magistrate and the respective Member States), and when working arrangements are in place, **liaison magistrates** can



be posted by the College to third countries to facilitate judicial cooperation (Article 53). In establishing contacts with third-country national authorities, the liaison magistrates aim at fostering and 'accelerating any forms of judicial cooperation in criminal matters'.

## Evaluation of Eurojust activities

To ensure proper democratic oversight of the agency, Article 85 TFEU envisages that Regulation (EU) [2018/1727](#) establishing the tasks, structure and operations of Eurojust will also set the arrangements under which the European Parliament and national Parliaments are involved in the evaluation of Eurojust activities. According to the regulation, an inter-parliamentary committee meeting involving the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the competent committees in the national parliaments will take place once a year. During that meeting, which takes place on Parliament's premises, the Eurojust President presents the agency's annual report and discusses ongoing activities (Article 67(3)). The European Parliament, national parliaments and the Council may also present observations and conclusions on the annual report. In addition, Eurojust will inform the European Parliament and the national Parliaments about studies and strategic projects conducted or commissioned by the agency, or on working arrangements with third parties (Article 67(4)). Finally, each time a new President of Eurojust is elected, they make a statement before the LIBE committee and undergo a question and answer session (Article 67(2)). Parliament's scrutiny of the President helps to ensure, inter alia, the accountability and legitimacy of the activities carried out by the agency. Regulation (EU) [2018/1727](#) also plans for an evaluation of the regulation's implementation, including on the agency's effectiveness and efficiency, to be carried out by the European Commission by 13 December 2024 and every five years afterwards. The results are made public and transmitted to Eurojust, the European Parliament, Council and national parliaments (Article 69). In December 2020, the LIBE committee, together with the European Parliament's Directorate for relations with National Parliaments, organised the [Inter-parliamentary Committee meeting](#) (ICM) on the evaluation of Eurojust activities. During the meeting, Eurojust presented its current and past activities, while Members of the European Parliament and members of national parliaments engaged in a joint evaluation that covered Eurojust cooperation with the EPPO, with third countries, and the challenges ahead in criminal cooperation following the United Kingdom's withdrawal from the EU. Most recently, on 22 March 2021, the agency [presented](#) its 2020 Annual Report to the LIBE committee. Notwithstanding the coronavirus pandemic, the agency reported having remained fully operational and facing a 13 % increase in registered cases compared to 2019. The agency had adjusted its working methods to comply with confinement rules and travel restrictions in place in the Member States. For instance, Eurojust's rules of procedure were [modified](#) to allow the agency to take decisions by videoconference given the impossibility for the College to meet physically.

## Eurojust: Quo vadis?

It is argued<sup>27</sup> that, in the field of judicial cooperation in criminal matters, the Lisbon Treaty opened the door to a possible shift 'from a rationale of cooperation to one of integration of national criminal justice systems'. In particular, Article 85 TFEU could enable Eurojust to move from a role as a supporting and coordinating agency that of an agency with 'initiating powers'. Although as far as 'prosecutions' are concerned, the Article clearly mentions that their initiation remains a Member State competence. As far as the initiation of criminal investigations is concerned, the provision leaves some room for interpretation. It is argued that a 'maximalist' approach would imply the possibility for Eurojust to initiate investigations and instruct national prosecutors, or even national police forces, on how to conduct the investigations. The case would then be transferred to the Member States in cases where a decision to prosecute is taken. A more 'moderate' option would leave the national competent authorities in charge of the investigation and in charge of instructing the national police forces.<sup>28</sup> However, when the European Commission put forward its proposal for a regulation on Eurojust in 2013, it decided not to fully exploit the possibilities<sup>29</sup> offered by Article 85 TFEU. To a certain extent, these possibilities remain under-used by the current regulation

in force. A 2020 EPRS [study](#) looked at the question as to whether the role and powers of Eurojust could be further strengthened without Treaty change. The study mentions for instance the possibility to enhance the agency's role in protecting the financial interests of the EU, for cases involving Member States not participating in the EPPO. The study also suggests that the Eurojust mandate could be reinforced to fight terrorism and serious cross-border crime, by granting it a binding power to initiate investigations; and to transform Eurojust and Europol into a European Bureau of Investigation and Counter-Terrorism.<sup>30</sup> The study recalls that the European Parliament has called for greater use of JITs, as well as for the creation of centres of excellence supported by Eurojust, such as the [European Judicial Cybercrime Network](#), which since 2016 aims at supporting judges and prosecutors specifically dealing with cybercrime and cyber-enabled crime.

## MAIN REFERENCES

- Craig P., De Búrca G., *EU Law, Text, Cases and Materials*, Seventh edition, Oxford, pp. 1010-1032, 2020.
- Eurojust Annual Report [2020](#), Criminal justice across border, March 2021.
- Luyten K., [EU Agency for Criminal Justice Cooperation \(Eurojust\)](#), EPRS, European Parliament, September 2018.
- Mitsilegas V., *EU Criminal Law after Lisbon, IV. Towards Vertical Co-ordination: The Evolution and Powers of Eurojust*, p. 94, 2018.
- Monar J., [Eurojust and the European Public Prosecutor Perspective: From Cooperation to Integration in EU Criminal Justice?](#), *Perspectives on European Politics and Society*, 14:3, 339-356, 2013.
- Monar J., [Eurojust's present and future role at the frontline of European Union criminal justice cooperation](#), ERA Forum 14, 187-200, 2013.
- [Unlocking the potential of the EU Treaties: An article-by-article analysis of the scope for action](#), EPRS, European Parliament, May 2020, pp. 41-42.

## ENDNOTES

- <sup>1</sup> Since Tampere in 1999, mutual recognition is considered the cornerstone of the EU judicial criminal area/criminal justice area. However, some authors argue that the differences in national systems as well as the numerous 'exceptions' existing in mutual recognition instruments (i.e. the European arrest warrant) undermine the effectiveness of mutual recognition. See J. Monar, [Eurojust's present and future role at the frontline of European Union criminal justice cooperation](#), ERA Forum 14, pp. 187-200, 2013. Others even argue that mutual recognition before Lisbon was more a political statement than everyday reality among judicial national authorities. See G. Vernimmen-Van Tiggelen, L. Surano, Analysis of the future mutual recognition in criminal matters in the European Union. Final report, Institute for European Studies, Université Libre de Bruxelles, 2008.
- <sup>2</sup> V. Mitsilegas, *EU Criminal Law after Lisbon, IV: Towards Vertical Co-ordination: The Evolution and Powers of Eurojust*, p. 94, 2018.
- <sup>3</sup> The declaration concerned 69 D(1), second subparagraph TFEU, [renumbered](#) Article 85 TFEU.
- <sup>4</sup> J. Monar, [Eurojust and the European Public Prosecutor Perspective: From Cooperation to Integration in EU Criminal Justice?](#), *Perspectives on European Politics and Society*, 14:3, pp. 339-356, 2013.
- <sup>5</sup> [Protocol](#) No 21 to the Lisbon Treaty referred to the position of Ireland (and of the United Kingdom) while [Protocol](#) No 22 referred to the position of Denmark in respect to the area of freedom, security justice. These Member States do not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of TFEU (i.e. the area of freedom, justice and security (AFSJ)). However, they retain the possibility to 'opt-in'.
- <sup>6</sup> At the time of writing, the members of the Executive Boards are: Ladislav Hamran, President of Eurojust, Klaus Meyer-Cabri and Boštjan Škrlec Vice-Presidents of Eurojust, Olivier Lenert, National Member for Luxembourg, Solveig Wollstad, National Member for Sweden and Richard Sonnenschein (Directorate-General for Justice and Consumers (JUST)), European Commission representative.
- <sup>7</sup> Other articles touch upon the treatment and transfer of personal data, for instance Article 56(2)(a) mentions that transfers of operational personal data to third countries by Eurojust may be made on the basis of adequacy decisions, in the absence of cooperation agreements or international agreements.
- <sup>8</sup> Under the TCA, Member States will issue EAWs, but the UK will issue arrest warrants. [Article 614](#): Decision in the event of multiple requests: 'If two or more States have issued a European arrest warrant or an arrest warrant for the same person, the decision as to which of those arrest warrants is to be executed shall be taken by the executing judicial authority...!.
- <sup>9</sup> Source: Eurojust Annual Report 2020, March 2021, p. 55.
- <sup>10</sup> According to Article 85(1) TFEU, it is for Parliament and Council to determine Eurojust's structure, operation, field of action and tasks, through regulations adopted via the ordinary legislative procedure.
- <sup>11</sup> At the time of writing, the President of Eurojust is Ladislav Hamran; Klaus Meyer-Cabri and Boštjan Škrlec are Vice-Presidents.
- <sup>12</sup> Because the agency's rules of procedure may have an impact on Member States' judicial activities, implementing powers are conferred on the Council to approve these rules, see Implementing Decision (EU) [2019/2250](#) of 19 December 2019.
- <sup>13</sup> Source: Eurojust Annual Report [2020](#), March 2021, p. 51.
- <sup>14</sup> Or, in respect of Member States that do participate in the enhanced cooperation, but for which the EPPO has no competences or has decided not to exercise them (Article 3.2).
- <sup>15</sup> J. Monar, [Eurojust and the European Public Prosecutor Perspective: From Cooperation to Integration in EU Criminal Justice?](#), *Perspectives on European Politics and Society*, 14:3, pp. 339-356, 2013.
- <sup>16</sup> Source: Eurojust Annual Report [2020](#), March 2021, p. 9.
- <sup>17</sup> J. Monar, [Eurojust's present and future role at the frontline of European Union criminal justice cooperation](#), ERA Forum 14, pp. 187-200, 2013.
- <sup>18</sup> Article 83(1) TFEU: 'These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime'.
- <sup>19</sup> As does the Europol Regulation in its [Annex I](#) and the Council Framework Decision [2002/584/JHA](#) on the European arrest warrant which, under its Article 2, lists the offences that, under certain conditions, 'would give rise to surrender pursuant to a European arrest warrant'. It is worth noting that Annex I of the Europol Regulation lists the same crimes as Annex I of the Eurojust Regulation. The EAW Framework Decision also lists the same crimes as above (using similar wording), plus rape, arson, unlawful seizure of aircraft/ships, and sabotage.
- <sup>20</sup> V. Mitsilegas, *EU Criminal Law after Lisbon, IV: Towards Vertical Co-ordination: The Evolution and Powers of Eurojust*, p. 98, 2018.
- <sup>21</sup> See also the opinion of the Advocate General Saugmandsgaard Øe (Case C-207/16) who considered that 'As EU law currently stands, there is no provision of general application that would provide a harmonised definition of the concept of "serious crime"'. In Case C-43/12, Advocate General Bot considered that 'the definition of criminal offence

- must then be a formal one, with no risk of heterogeneity between the Member States since they are obliged to give the same classification to a given offence'.
- <sup>22</sup> With the risk of oversimplifying, it can be said that Eurojust is competent in the area of judicial cooperation among prosecutors and magistrates, while Europol is competent in the area of police cooperation. Usually when an investigation begins, it is led by a magistrate who is also responsible for overseeing the work of the law enforcement officers.
- <sup>23</sup> While [previously](#), Eurojust could negotiate and conclude cooperation agreements on its own.
- <sup>24</sup> Other third States identified are: Brazil, China, Canada, United Arab Emirates, Nigeria, Panama, Mexico and Russia. In addition, the International Criminal Court (ICC); the International Criminal Police Organisation (ICPO-Interpol); the Ibero-American Network of International Legal Cooperation (Iber-RED); the Office of the Prosecutor of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM); the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD); and Ameripol have been identified as international organisations for possible cooperation in 2020-2024.
- <sup>25</sup> The United Kingdom appointed Ms Samantha Shallow as of 1 January 2021.
- <sup>26</sup> Source: Eurojust Annual Report [2020](#), March 2021, p. 27.
- <sup>27</sup> J. Monar, [Eurojust's present and future role at the frontline of European Union criminal justice cooperation](#), ERA Forum 14, pp. 187-200, 2013.
- <sup>28</sup> Ibid.
- <sup>29</sup> Council of the European Union, [8488/14](#), April 2014, 'Eurojust observes in this respect that the Proposal still limits its role to 'supporting and strengthening' coordination and cooperation between national ... The opportunity offered by Article 85(1) second part TFEU to enhance Eurojust's unique ability to coordinate investigations and prosecutions in serious cross border cases in a more incisive manner has not been seized in the Proposal'.
- <sup>30</sup> See also Parliament [Resolution](#) of 16 February 2017, on possible evolutions of and adjustments to the current institutional set-up of the European Union, paragraph 33: 'Europol and Eurojust should receive genuine investigation and prosecution competences and capabilities, possibly by a transformation into a true European Bureau of Investigation and Counter-Terrorism, with due parliamentary scrutiny'.

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