



Eurojust

The European Union's
Judicial Cooperation Unit



THE ROLE OF EUROJUST IN A EUROPEAN PUBLIC PROSECUTOR'S OFFICE

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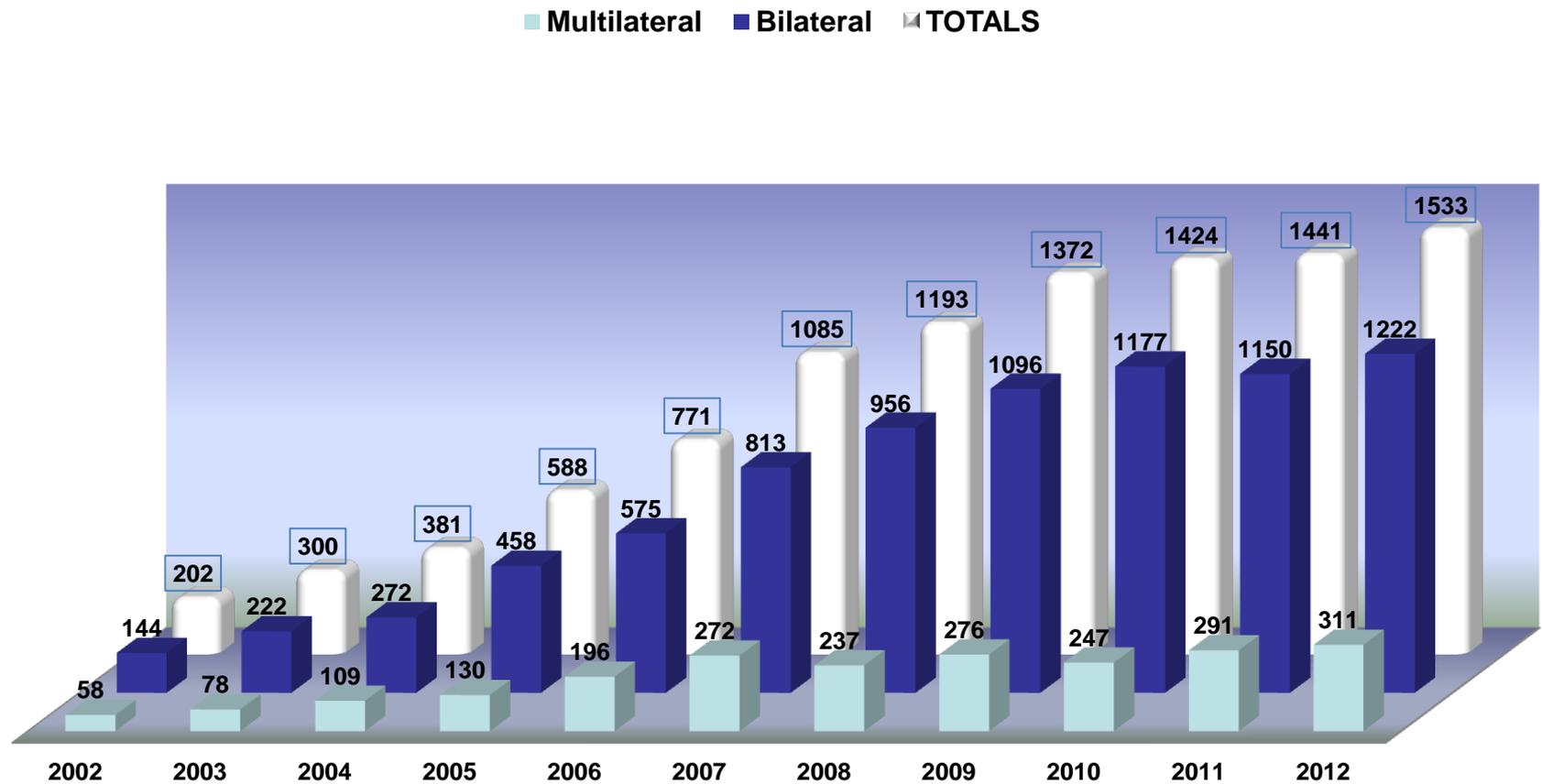
EUROJUST



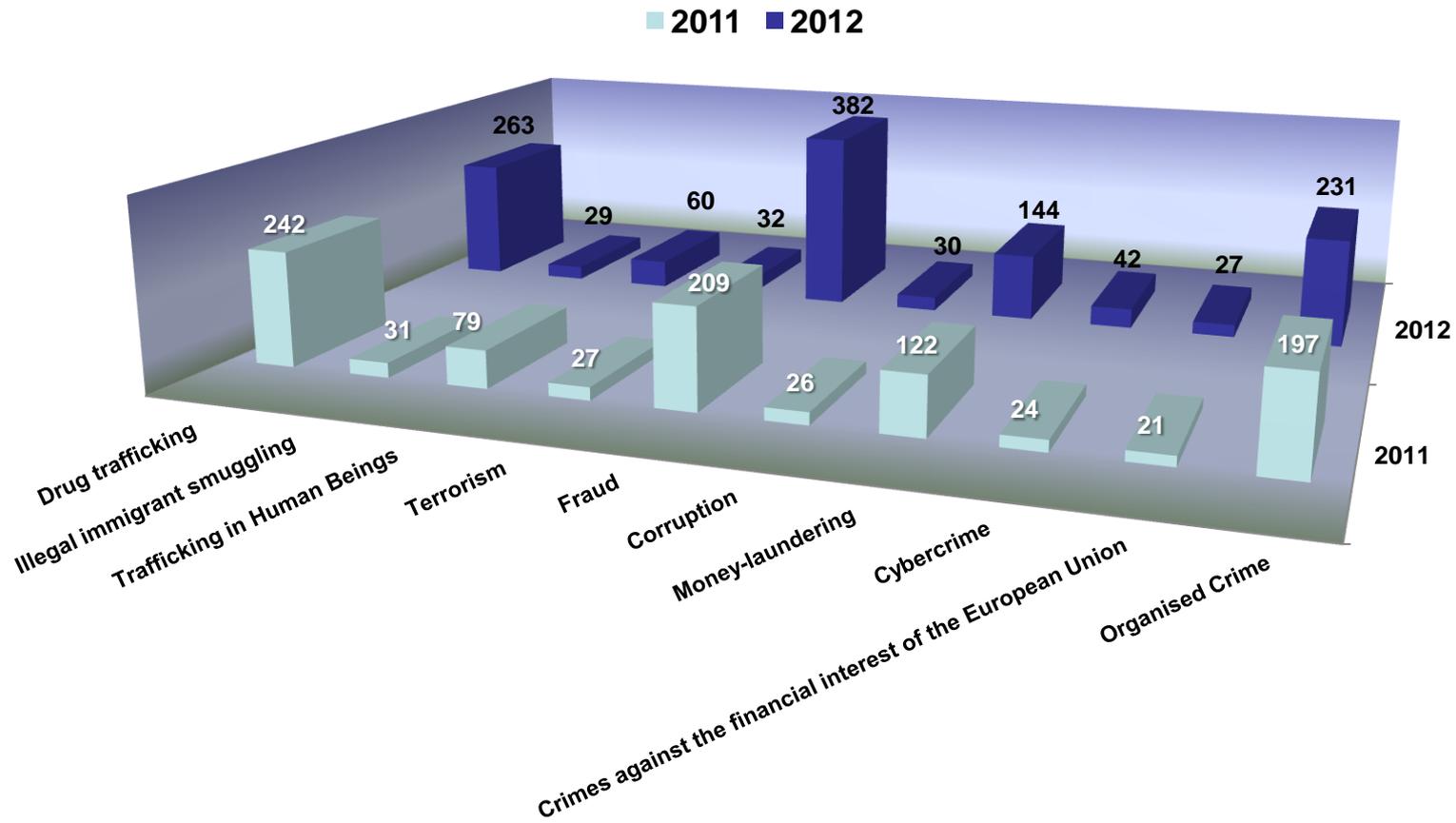
27 EU PROSECUTORS/JUDGES



Case evolution 2002-2012



Priority crime types in Eurojust cases 2011-2012



A major “post-Lisbon” challenge for Europe: the establishment of an EPPO

- Lisbon Treaty: the EU Area of Freedom, Security and Justice is moving towards a new phase of development in several fields
- Major challenge: Combating crimes affecting the EU’s financial interests (PIF crimes), including the possibility of establishing a European Public Prosecutor’s Office (EPPO) from Eurojust
- July 2012: the Commission proposes a Directive on the fight against fraud by means of criminal law
- Expected this year: Regulation on the establishment of the EPPO
- Eurojust: Interested, active and pleased to be associated with ongoing European debate, conferences, studies

Lisbon Treaty: Article 86 TFEU

- *“In order to combat crimes affecting the financial interests of the Union,...”*
- *“...may establish a **European Public Prosecutor’s Office** **“from” Eurojust.**”*
- *“The European Public Prosecutor’s Office shall be responsible for investigating, prosecuting and bringing to judgment,...”*

EPPO as new EU player

Features to make it work:

- **Integrated** in existing landscape of police and judicial cooperation
 - **Strong link** to competent national authorities: investigations of PIF cases at national level and competence of courts of the Member States
 - **Acting together** with other EU actors in the field in a coordinated and complementary way: effective and efficient action to avoid impunity gaps, e.g. Eurojust, Europol, OLAF
- ***Building on experience, expertise and creating synergies***

EPPO from Eurojust

- Eurojust: only European body that currently ensures and facilitates judicial coordination and cooperation between the national authorities of the Member States of the Union in the fight against serious crime
- Article 85 TFEU: tasks of Eurojust may include initiating criminal investigations and proposing the initiation of prosecutions conducted by competent national authorities, *“particularly those relating to offences against the financial interests of the Union”* (Article 85(1)(a)).
- Cases already successfully handled by Eurojust : fraud (including customs fraud, VAT fraud and, specifically, VAT carousel fraud), corruption, money laundering and also cigarette smuggling and counterfeiting of the euro

EPPO alongside Eurojust

Eurojust is called to play an **essential** role in:

- case of creation of the EPPO on the basis of **enhanced cooperation**: Eurojust will be the necessary coordinator between the participating and non-participating Member States
- relation with **connected crime cases** : Eurojust is competent to act in other types of offences committed and will coordinate efforts of the EPPO and competent national authorities

Eurojust`s support to the EPPO

Eurojust can be also of added value regarding:

- Cooperation and coordination with **third States**
- Ties with competent national authorities in the Member States via the **Eurojust National Coordination System**
- Use of available technical tools (Eurojust Case Management System) and **exchange information with Eurojust**
- **Working relations** with partners such as Europol, OLAF and EJM

EPPO: Some vital questions (I)

- Scope of the EPPO's jurisdiction and competence?
Primacy over the national authorities?
Which cases should be left with the national authorities?
- Structure of office ? How should it work in practice?
- How the EPPO's independence and impartiality can be safeguarded?
- Rules to apply: National procedural codes according to the relevant Member State's jurisdiction or rather a set of, at least, minimum common rules applicable in the whole EU territory?

EPPO: Some vital questions (II)

- Criteria to choose the State of trial? Jurisdictional control of the EPPO's actions that may affect fundamental rights of individuals?
- Regulation of relationships with the national authorities ?
- Relationships with OLAF, Europol and, in particular, Eurojust?
- Administrative Support: HR, IT/IM, etc. ?

Life-cycle of an EPPO PIF case



Case illustration I

Reporting on suspicions of PIF crimes within EPPO scope

- The beneficial owner of a major **Spanish** holding company with interests in different business areas (petrol, gas, agriculture, real estate, food enterprises) was investigated in **Spain, Belgium and UK** for tax fraud, money laundering and participation in a criminal organisation.
- Lawyers from a firm were indicted for allegedly setting up a network of companies and financial transactions in **Panama**, the Netherlands and **Switzerland** to hide the ownership of the assets.
- Eurojust held two coordination meetings with national authorities from Spain, Belgium and the UK, which led to agreement on the prosecution strategy and the legal actions to be adopted in this case.
- During the second coordination meeting, it results from the information exchanged between the competent authorities, that the same tax evasion scheme was applied by the **same holding company in Spain and Belgium to systematically commit fraud against the financial interests of the EU.**

Case illustration I - Support by Eurojust

Reporting on suspicions of PIF crimes within EPPO scope

- Assuming that both Spain and Belgium participate in the EPPO, the suspected EU fraud would, after discussion with the relevant national competent authorities, be immediately reported to the EPPO.
 - Eurojust could organise a meeting at its or the EPPO's premises in order to support the EPPO at the beginning of its investigation.
 - Eurojust could support the EPPO and the national authorities in the coordination of the parallel investigations between the EPPO Member States (Belgium and Spain) and the EU non-EPPO member States (UK) as well as with third States (Panama and Switzerland) during all relevant phases.
- From the analysis of the information received on the basis of Article 13 of the Eurojust Decision, Eurojust identified significant links between this case and another investigated in Portugal. A Portuguese holding company committed fraud against the financial interests of the EU following the same tax evasion scheme applied by the Spanish holding company in Spain and Belgium.

The EPPO would be immediately informed at the same time as the competent national authorities of the Member States involved about the Eurojust's findings.

Case illustration II

**Criminal
investigation directed
by EPPO**

- 18 EU Member States and 3 non-EU Member States involved
- Revenue fraud across the EU estimated at EUR 7.5 billion
- The fraud operated via a chain of transactions involving several countries
- **UK** and **Dubai** playing important roles as missing trader/buffer/exporter and money launderer, respectively
- At stake: jurisdictional questions within the EU (primacy of prosecution and future asset recovery from a non-EU country; how to link evidence of the fraud to money laundering activities)
- One Member State, **the Netherlands**, advanced in the investigation process, having already closed a suspect bank and mounted a prosecution
 - ✓ Need to cooperate and ensure that the actions of any other involved Member States do not adversely affect the ongoing prosecution in the Netherlands
 - ✓ Freezing of assets in the repository Dubai bank supported by Mutual Legal Assistance requests from the EU Member States affected by the fraud
- For case illustration purposes, one can presume that **the Netherlands participates in the EPPO, whilst the UK does not**

Case illustration II - Support by Eurojust

Criminal
investigation directed
by EPPO

- If the EPPO believed that the prosecution of the case should be concentrated in the Netherlands, it cannot oblige the UK (non-EPPO) not to prosecute or to transfer its proceedings. **The appropriate forum of prosecution could be discussed at Eurojust with the involvement of all relevant Member States and the EPPO.**
 1. Under Art. 6 or 7 Eurojust Decision, the UK National Member or the College ask UK's competent authorities to accept that the Netherlands is in a better position to prosecute.
 2. The College issue a written non-binding opinion (Article 7(2)).
 3. If Eurojust is given binding powers (Article 85 TFEU) for the resolution of conflicts of jurisdiction, at least for PIF, the "request" of Eurojust would become an "order" to be accepted and executed.
- Eurojust helps the EPPO with the requests for the transfer of proceedings and the Member States with the execution of those requests.

Case illustration II - Support by Eurojust (continued)

Criminal
investigation directed
by EPPO

- Assuming that the UK did not yet open an investigation or prosecution and the EPPO would need the UK to do so for the benefit of the overall investigation, under **Article 6 or Article 7 of the Eurojust Decision the National Member or the College could ask the competent authorities of the UK to undertake the investigation or prosecution.**

If Eurojust is given binding powers (Article 85 TFEU) as to the initiation of criminal investigations and the proposal of the initiation of prosecutions, at least for PIF, this would mean that an “order” coming from a National Member of a non-EPPO State or from the College should be executed by any Member State concerned.

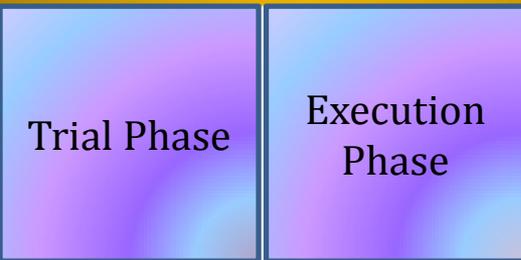
- Eurojust’s intervention in order to coordinate the investigations: organise one or more coordination meetings with the EPPO and all countries involved in order to discuss *inter alia* the way in which the admissible evidence will be gathered.

Case illustration II - Support by Eurojust (continued)

**Criminal
investigation directed
by EPPO**

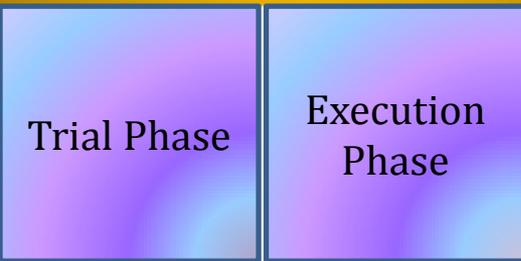
- Eurojust provides information on jurisdictional questions and asset recovery from Dubai, a non-EU country.
- Eurojust identifies links between this case and other crimes possibly committed in other countries.
- A coordination centre held at Eurojust, with the assistance of Europol, in order to link the judicial authorities of the EPPO (the Netherlands) and non-EPPO (the UK) States during an agreed “action day”. Allow a real-time transmission and coordination of information between investigative and judicial authorities as arrests and searches took place simultaneously in all involved States.
- A JIT established with the support, know-how and experience of Eurojust.

Case illustration III



- A serious EU fraud case, investigated and prosecuted by the EPPO and involving three Member States - Italy, Denmark and the UK, is currently in trial phase before the competent court in Italy.
- Italy participates in the EPPO, whilst Denmark and the UK do not.
- The main accused in the Italian trial declares that he has been already convicted for the same crime in Denmark two years before and is currently prosecuted in the UK. However, his statement is not supported by any evidence. As the risk of *ne bis in idem* situation is high, the Italian judge asks to verify rapidly the truthfulness of the declaration.
- At the very final stage of the court proceedings, the Italian Court urgently requests the precise dates of detention that the accused spent in Denmark. The accused was arrested in Denmark and surrendered to Italy according to a EAW issued before the beginning of the trial. In order to tally up the exact punishment and impose the sentence, the Italian judge needs to know the exact time the accused spent in detention in Denmark because of the Italian EAW.

Case illustration III - Support by Eurojust



- Considering the involvement of Denmark and the UK, non-EPPO Member States Eurojust is asked to intervene and, within hours of the request being made, is able to provide the Italian court with the information needed concerning both the conviction in Denmark and the ongoing prosecution in the UK.
- Eurojust is requested to facilitate the execution of this urgent request and, within a few hours, is able to provide the Italian judge with the needed additional information received from the Danish competent authorities.

Synergies between Eurojust and EPPO

- Sharing the **expertise and experience** that Eurojust has gained over the past 11 years in judicial cooperation and coordination, casework, JITs, the EAW, conflicts of jurisdiction and vice versa
- Utilising and **taking part** in Eurojust`s tools, such as coordination meetings, coordination centres...
- Building on existing operational and administrative **resources** and considering **co-location** in The Hague to generate economies of scale *“tackle fraud at lower cost”*

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