

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

Distinguished Ladies and Gentlemen, it is my honour to speak to you today about the role which Eurojust could play, and is ready to play, in the creation and operational functioning of a European Public Prosecutor's Office (EPPO) in the European Union.

In my speech I shall share with you some key aspects regarding the challenges and perspectives of the cooperation between Eurojust and the EPPO, ask some vital questions which still need answers, and call for the creation of synergies.

Eurojust's role and main tools

Legal obstacles continue to arise as a result of differences between the 30 existing legal systems in the European Union. The Lisbon Treaty reaffirms the principle of mutual recognition and the corresponding need for mutual trust.

Eurojust supports and strengthens coordination and cooperation between the national investigation and prosecution authorities of Member States when dealing with serious cross-border crime cases by, *inter alia*, facilitating the execution of mutual legal assistance, the application of judicial cooperation instruments and decision-making regarding conflicts of jurisdiction.

Eurojust's main tools are coordination meetings and coordination centres. They bring together both law enforcement and judicial authorities, allowing for strategic, informed and targeted operations and the resolution of legal and practical difficulties.

Coordination meetings have proven valuable to national authorities for a number of reasons, an important one being the exchange of information between the participating Member States. The advantage of early information exchange is that it allows Member States to initiate investigations, identify possible parallel proceedings in other Member States, exchange evidence, overcome language barriers and build mutual trust. In some cases, the objective may be to agree upon a concrete division of work between the participating national authorities, or to reach a mutual understanding on which national authorities are in the best position to prosecute the crimes involved. Another important feature of coordination meetings, and one used frequently in 2012, is that they allow Member States to plan common actions and to set up joint investigating teams. Furthermore, in addition to authorities from Member States, representatives of third States and EU bodies such as Europol and OLAF may also, where appropriate, participate in coordination meetings.

Priority crime types in Eurojust cases

Eurojust's work priorities for 2013, adopted in line with the Council's conclusions on setting the EU's priorities for the fight against organised crime, are terrorism, drug trafficking, trafficking in human beings, fraud, corruption, cybercrime (including child sexual abuse images), money laundering, organised crime (including organised crime groups), illegal immigration, and criminal offences affecting the EU's financial interests (the so-called PIF offences).

Eurojust does not specifically fight against PIF offences *per se*. Thus far, the cases handled by Eurojust in combating such offences show a positive trend. Eurojust deals extensively with cases concerning fraud (including VAT fraud and, specifically, VAT carousel fraud) and any other criminal offence affecting the EU's financial interests. Moreover, special attention is paid to other criminal offences closely linked to those affecting the EU's financial interests, such as corruption and money laundering.

The establishment of an EPPO: a major “post-Lisbon” challenge for Europe

With the entry into force of the Lisbon Treaty on 1 December 2009, the EU Area of Freedom, Security and Justice is moving towards a new phase of development in several fields.

The improvement of the legal and institutional framework aimed at combating in a more effective way crimes affecting the EU's financial interests, including the possibility of establishing a European Public Prosecutor's Office from Eurojust, is one of the major challenges.

It is also well known that this subject matter is high on the European Commission's political agenda. In July 2012, the Commission proposed a Directive on the fight against fraud by means of criminal law, which is currently under discussion in Brussels. This Directive, once adopted, should clarify the scope and meaning of a PIF offence and, eventually, facilitate common understanding and cooperation and lead to better results.

Moreover, soon this year a proposal for a Regulation on the establishment of an EPPO is expected. This proposal should be placed side by side with the proposal on the new Regulation on Eurojust on the basis of Article 85 of the Treaty on the Functioning of the European Union (TFEU), also expected in 2013.

Eurojust is undoubtedly interested and active in the preparation of its future development and is pleased to be associated to the ongoing European debate on the topic. Its contribution is informed by the operational experience acquired by the College since the setting up of Eurojust in 2002, for instance in the field of the protection of EU financial interests – which is likely to be, at least in a first stage, the EPPO's area of competence. All of the ongoing debates, conferences and studies are definitely welcome as they form the basis for a thorough impact assessment of the need for the creation of an EPPO, which is the essential pre-condition for its establishment.

Lisbon Treaty: Article 86 TFEU

The debate among experts, academics and EU institutions on the possible establishment of a European Prosecutor started in the late 90's with the publication of the *Corpus Juris* (1997). However, it is only with the introduction of a specific legal basis in the Treaty – Article 86 – that the discussion has been fully revived.

As you know, Article 86 TFEU provides for the possibility of establishing an EPPO “from Eurojust” to combat crimes affecting the financial interests of the Union (Article 86(1)). Moreover, the Treaty provides for the possibility for the European Council, acting unanimously, to extend the powers of an EPPO to include under its sphere of competence serious crime having a cross-border dimension (Article 86(4)).

The proposal for the creation of an EPPO, especially in this difficult period of economic crisis, should be seen as an opportunity to fight PIF crimes more efficiently and to improve the trust of citizens in the institutions. Effectiveness in protecting the EU’s financial interests and cost-efficiency should be the guiding principles for the setting up of an EPPO, no matter which design will finally be chosen for it.

An EPPO may be established by the Council, according to a special legislative procedure, acting unanimously and after obtaining the consent of the European Parliament. The Treaty provides also for the possibility to create an EPPO through enhanced cooperation established by at least nine Member States in conformity with the provisions on enhanced cooperation (Article 86(1)).

An EPPO shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of offences against the Union’s financial interests. It shall exercise the function of prosecutor in the competent courts of the Member States in relation to such offences (Article 86(2)).

As already said, the discussion on the creation of an EPPO is closely linked to the ongoing debate on the reform of Eurojust. One of the main challenges to ensure that an EPPO is part of a coherent system is its relationship with Eurojust. The fact that Article 86 TFEU states that an EPPO should be established “from Eurojust” clearly establishes a strong link between the two bodies.

An EPPO as new EU player

The new institutional setting to fight against PIF crimes should bring clear added-value compared to the present situation. To make it work, it should be integrated in the existing landscape of police and judicial operations. It should also have a strong link to competent national authorities, not only for the investigation of PIF cases at national level, but also in relation to the competence of the courts of Member States.

Eurojust already intervenes in concrete cases, in particular by facilitating the prompt execution of rogatory letters and coordinating the steps to be taken in investigations and prosecutions. For instance, Eurojust assists national authorities by the preparation and facilitation of execution of mutual legal assistance requests, organisation of coordination meetings, and handling very urgent requests - in particular when national time limitations are about to expire.

Nevertheless, the intervention of Eurojust essentially concerns cross-border cases when facilitation of mutual legal assistance or coordination of investigations and prosecutions are requested by a national judicial authority. This means that obviously, under the current legal

framework, not all cases of fraud or misuse of EU funds investigated at national level are referred to Eurojust.

With the establishment of an EPPO, OLAF and Eurojust will need to build even stronger cooperation and coordination to achieve effective and efficient action to avoid impunity gaps, since their respective roles in the EPPO will become even more complementary and interlinked.

An EPPO from Eurojust

It is important not to forget that Eurojust is the 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.

Moreover, as far as the EU's financial interests are concerned, Article 85 TFEU specifically indicates that the tasks of Eurojust may include initiating criminal investigations as well as 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)).

Both an EPPO and Eurojust will have to complement and support each other in the European action to fight against crime affecting the EU's financial interests. Therefore, close coordination will be needed and the development of the one cannot disregard the development of the other, as the Lisbon Treaty also suggests.

Articles 85 and 86 TFEU are in fact complementary provisions that should be developed in parallel to conceive a coherent system and avoid overlapping. In designing an EPPO, attention should be given to the role of Eurojust and, in reforming Eurojust, the possible creation of an EPPO should be taken into account.

Under the current legal framework, Eurojust already successfully ensures coordination and cooperation between the national authorities of Member States: cases managed by Eurojust in combating such crimes, and economic crimes in general, show a positive trend. In our daily work, we deal with cases concerning fraud (including customs fraud, VAT fraud and, specifically, VAT carousel fraud), corruption, money laundering as well as cigarette smuggling and counterfeiting of the euro.

It is, however, important to underline that Eurojust and an EPPO would apply completely different models that should remain distinct: Eurojust's strength lies in the power of persuasion by horizontal and informal cooperation. Even if extended in accordance with Article 85 TFEU, Eurojust's powers do not and will never equal those of an EPPO that will be created to "*investigate, prosecute and bring to judgment*". Eurojust could only be entrusted, at most, with the initiation of prosecutions and proposing that national authorities prosecute a case (Article 85(1)(a) TFEU), without having the power to take any formal act of investigation (Article 85(2) TFEU).

Thus, what will be the relation between Eurojust and an EPPO? How will they interact and complement each other in practice? Time does not allow me to enter into the details of this complex matter, but I can introduce some considerations.

The wording of Article 86, “EPPO from Eurojust”, is vague, probably deliberately, to leave the largest possible *marge de manœuvre* to the legislator. However, by mentioning both organisations (EPP’s Office and Eurojust), the intention seems to be not to replace Eurojust but to establish close cooperation between the two.

For instance, an EPPO could be set up within Eurojust as a separate unit specialising in the protection of the EU’s financial interests (or in other crimes within its competence), making use of the existing administrative structure and resources of Eurojust and having direct and constant contact with the College and the National Members of Eurojust in its operational work, especially in cases where suspects of crimes affecting the Union’s financial interests are involved in other serious transnational crimes falling outside the sphere of competence of an EPPO.

An EPPO alongside Eurojust

If an EPPO is created through enhanced cooperation by a minimum of nine Member States (as will most probably be the case), it will need to coordinate its actions with the national judicial authorities of those Member States not involved in the enhanced cooperation, likely under different legal frameworks. Therefore, in these cases Eurojust would also, at the request of the EPPO or of a Member State, be called to play its natural and pivotal role in enhancing and facilitating judicial cooperation and coordination between the EPPO and the national judicial authorities of the Member States that do not participate in the EPPO.

Eurojust would also be called to play an essential role in relation to connected crime cases. Eurojust is competent to act in other types of offences committed and would coordinate efforts of the EPPO and the competent national authorities.

Eurojust’s support of an EPPO

Eurojust could also be asked to provide support in facilitating judicial cooperation and coordination between an EPPO and third States, for example via the concluded cooperation agreements and by using its contact points worldwide.

Moreover, most probably an EPPO will need to rely on delegates acting in the Member States. Another important connection between Eurojust and an EPPO could be ensured by closely linking the EPPO’s delegates in the Member States to the Eurojust National Coordination System (ENCS), as created by the 2009 Eurojust Decision (Article 12) to ensure coordination at national level of the actions of Eurojust. For instance, the EPPO’s delegates could be part of the ENCS in the Member States that participate in the EPPO.

Eurojust could place technical tools such as the Eurojust Case Management System at the disposal of the EPPO and exchange information with the EPPO. The EPPO could also benefit from Eurojust’s working relations with partners such as Europol, OLAF and EJN.

Some vital questions regarding an EPPO

On several points, the Treaty's legal basis is far from clear and exhaustive. The establishment of an EPPO raises many issues and concerns, not only at political level, but also from a legal, institutional and procedural point of view. A number of questions still remain open to different solutions; below are just a few of them:

- What will be the scope of an EPPO's jurisdiction and competence? Should it have primacy over the national authorities? Which cases should be left with the national authorities?
- Which structure should the office have? How should it work in practice?
- How can an EPPO's independence and impartiality be safeguarded?
- Which rules should an EPPO apply? National procedural codes according to the relevant Member State's jurisdiction? Or rather a set of, at the least, minimum common rules applicable across the entire EU?
- Which criteria should be applied to choose the State of trial? Jurisdictional control of an EPPO's actions may affect the fundamental rights of individuals.
- How will relationships with the national authorities be regulated?
- And, very important from our perspective, how will relationships with OLAF, Europol and, in particular, Eurojust be regulated?
- How should administrative support, including human resources and information management, be organised?

All of these issues, closely linked to each other, need to be attentively addressed and the initial proposal from the Commission will likely provide a reply to many of them.

In the coming months the EU legislator will have the opportunity to finally ensure complementarity and coherence between all of the existing and future actors in this area, by "lisbonising" the founding instruments of Eurojust, EJN and Europol and creating a new body, the EPPO.

Concluding remarks: Synergies between Eurojust and the EPPO

By working together with Eurojust, an EPPO could benefit from many advantages, such as:

- sharing the expertise and experience that Eurojust has gained over the past 11 years in judicial cooperation and coordination, casework, JITs, the EAW, and conflicts of jurisdiction.
- utilising and taking part in Eurojust's tools, such as coordination meetings and coordination centres.
- building on existing operational and administrative resources and considering co-location in The Hague to generate economies of scale to tackle fraud at a lower cost.

I thank you all for your attention and look forward to the discussion which will follow on the Potential Contribution of a European Public Prosecutor's Office.