

# EUROJUST

## *A JUSTICE BRIEFING TO MEPs*

February 2002



## JUSTICE

JUSTICE, 59 Carter Lane, London EC4V 5AQ

Tel: 020 7329 5100 Fax: 020 7329 5055 E-mail: [admin@justice.org.uk](mailto:admin@justice.org.uk)

[www.justice.org.uk](http://www.justice.org.uk)



## **JUSTICE note on Council Decision setting up Eurojust (Eurojust 14 - 3<sup>rd</sup> Dec 2001)**

1. The latest draft of the Council Decision setting up Eurojust (a permanent unit to facilitate criminal judicial co-operation between prosecutors and magistrates in the EU member states) was agreed by the Council in December 2001 and will be adopted early in 2002. Its predecessor "pro-Eurojust" has been functioning for almost a year and has facilitated a number of arrests during this time. Of 180 cases referred to the unit, 61 have been closed<sup>i</sup>.
2. The final draft of the Decision contains some areas of concern to JUSTICE. The procedural rules of Eurojust to be drafted by the national members of Eurojust and approved by the Council must be drawn up carefully. JUSTICE feels that the following issues need to be considered and monitored as Eurojust begins to work:

### Judicial Accountability

3. The Decision contains no provision for judicial accountability in general for Eurojust (except in relation to data protection). Eurojust is given legal status by the Decision but the absence of jurisdiction of either the European Court of Justice (ECJ) or the European Court of Human Rights (EctHR) in relation to Eurojust's activities when acting as a college needs to be addressed to ensure that the role of Eurojust is not open to abuse. The notion of judicial accountability is not familiar to all Member States of the EU and the nature of Eurojust means that many of its national members will be judicial authorities in their own Member States. However, all Member States recognise the jurisdiction of the EctHR and all recognise the jurisdiction of the ECJ in EU matters outside of the 'third pillar'. The principle of supra-national judicial accountability for Eurojust should not, therefore, be entirely alien to the judicial systems of any national members.
4. The issue of jurisdiction of the ECtHR would need to be addressed within the context of the EU signing up to the ECHR. The absence of jurisdiction of the ECJ in relation to procedural issues within the third pillar is exacerbated by the fact that some countries, including the UK, have decided not to permit their courts to send references to the ECJ at all in relation to third pillar issues. The differences in competence of the ECJ between the Member States add to the difficulties outlined below relating to inequality of powers between national members of Eurojust.

### Inequality of Powers between National Members and their assistants

5. National members of Eurojust will be “a prosecutor, judge or police officer of equivalent competence”. Article 7 states that “National members shall be subject to the national law of their Member State of origin as regards their status...” and then that “Each Member State shall define the nature and extent of the judicial powers it grants its national member within its own territory. It shall also define the right for a national member to act in relation to foreign judicial authorities...”
6. JUSTICE is concerned that these provisions may lead to a confusing and unwieldy collection of powers and roles within Eurojust that would be very difficult to unravel. The diplomatic status of the various national members seems to vary<sup>ii</sup> and this could give rise to degrees of immunity on a national and international level. This may add to the imbalance of powers between the national members and exacerbating the issues outlined above relating to judicial accountability.
7. JUSTICE is also deeply concerned by the possibility of police officers with judicial competence forming a part of Eurojust. From a UK perspective, it is difficult to understand how a police officer could have equal competence to a magistrate or prosecutor. The inclusion of police officers as national members of Eurojust may raise questions as to the UK notion of the prosecutorial independence of the Unit.

### Powers of Eurojust acting as a College

8. There must be a clarification of the procedure by which the Eurojust College reaches a decision to make a request of a Member State to consider whether another Member State might be in a better position to conduct and investigation or prosecution as outlined in Article 6b. This is particularly important as a Member State is bound to give reasons for not complying with such a request unless to do so would harm essential national security interests or jeopardise the success of investigations or the safety of individuals. This puts a burden on Member States to justify themselves in going against the views of the Eurojust College and this degree of power needs to be clearly defined in Eurojust's rules of procedure.

## Transparency

9. There is a need for transparency in relation to agreements drawn up between Eurojust and third countries as well as further information on the procedural rules of Eurojust and the role of the Commission as these are clarified. Public access to information regarding the powers of the individual national members of Eurojust, their assistants and third country secondees is paramount in ensuring that the nature of Eurojust can be monitored, thus encouraging public trust in the unit.
10. The Commission is to be “fully involved in the work of Eurojust”. The practical aspects of this cooperation are to be agreed between Eurojust and the Commission. In the interests of transparency, the procedural arrangements for such agreement should be open and available for scrutiny.

## Data Protection

11. The Decision contains provisions for data protection and clearly addresses the importance of this issue. The nature of the data relating to prosecutions likely to be kept by Eurojust makes it probable that the right of the individual to know and correct data relating to them will, in fact, be illusory. As data held by Eurojust will mostly be sensitive and relate to ongoing investigations, most requests for access to personal data would probably fall into the three categories of exemptions for which access to data shall be denied<sup>iii</sup>. For this reason, close supervision of the accuracy of data kept by the Data Protection Officer and the active role of the Joint Supervisory Body provided for in the Decision are paramount in maintaining high standards of data protection.
12. Liability and complaints against Eurojust in this area will be dealt with under the law of the Member State where its headquarters are based and in that Member State’s courts. This raises the question of which Member State that will be. As no final decision was reached on the location of Eurojust at the European Council in Laeken (December 2001), the provisional location will be the Hague. Clearly, there will be different levels of liability applicable according to which Member State is chosen. Consideration should be given to ensuring that the Member State concerned has laws that provide the highest levels of data protection possible within the EU to ensure that high standards are maintained in this very sensitive area.

### Exchanges of information with third countries

13. Eurojust may conclude agreements with third countries and other international entities with Council approval. Those agreements may include the secondment of liaison officers or liaison magistrates to Eurojust. The secondees will be subject to the law of their state of origin and would not be governed by EU data protection and human rights legislation.
14. Eurojust may also exchange data with a third country according to agreements drawn up to that effect. A national member of Eurojust acting in his/her national capacity may exchange personal data with a third country in the absence of data protection safeguards outlined in the Eurojust Decision “by way of exception and with the sole aim of taking urgent measures to counter imminent serious danger threatening a person or public security”. This provision is clearly aimed at situations of urgency where the right to life or national security is at issue. However, JUSTICE is concerned that this provision may allow for data protection provisions within the Eurojust Decision to be abused.
15. As third countries are not bound by the data protection and human rights legislation common to all Member States of the EU, special attention must be given to the conditions in which Eurojust exchanges information and co-operates with third countries in order to ensure that EU standards in these areas are maintained.

### Conclusion

16. The creation of Eurojust gives the EU a useful tool to enhance judicial co-operation between the EU Member States in the fight against crime. This laudable goal should not overshadow the need to maintain high standards of human rights and data protection within the EU. Careful attention must be given to the working of Eurojust to ensure that the unit is not open to abuse.
17. **JUSTICE believes that judicial accountability is an issue that must be addressed within the context of increased co-operation on a police and prosecution level across the EU. This should involve an enhanced role of the ECJ and accountability of EU bodies to the ECtHR. Increased co-operation between law enforcers on an EU level must be accompanied by increased co-operation between criminal lawyers in general and a specific Framework Decision on the rights of the**

individual in criminal proceedings involving international co-operation could go some way to providing that balance.

**18. A clear distinction must be drawn between Eurojust's activities relating to purely EU competent authorities and activities involving co-operation with third states including candidate countries and the USA. While candidate countries will soon be a part of the EU and closer co-operation with them is a necessary part of the process of accession, other countries such as the USA cannot be treated in the same way. EU Member States and eventually the candidate countries share international obligations relating to data protection and the respect for human rights, no such obligations are binding on third countries. Judicial co-operation within the EU is based on shared principles and mutual trust of judicial systems grown out of the EU legal and political framework, it should not be extended indefinitely to states which are not a part of this framework and over which the EU has no judicial or political control. JUSTICE is deeply concerned by any suggestion that procedural safeguards should be minimised in relation to third states as part of a trend towards increased judicial co-operation in the EU<sup>iv</sup>.**

## **JUSTICE**

22 January 2002

---

<sup>i</sup> Pro-Eurojust Report 2001, p.6.

<sup>ii</sup> Pro-Eurojust Report 2001, p.4.

<sup>iii</sup> Article 11.3.(a) Eurojust 14 – Doc 14766/01, Brussels, 3 December 2001 (05.12). See also P.70 “The Schengen Information System - A human rights audit”, Madeleine Colvin, JUSTICE 2000 relating to data held on the SIRENE database and evidence given by the Director General of the NCIS to the House of Lords' European Communities Committee on 17 June 1998 where he admitted that the “prejudice” exemption test had been relied upon in all subject access requests made to it during the three years 1995-98.

<sup>iv</sup> See Pro-Eurojust Report 2001, p.13-14 – Obstacles to Mutual Legal Assistance.