



**JUSTICE written evidence on EUROJUST
prepared for the House of Lords Select
Committee on the European Union (Sub-
Committee F)**

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1. JUSTICE is an independent all party law reform and human rights organisation which aims to improve British justice through law reform and policy work, publications and training. It is the British section of the International Commission of Jurists. JUSTICE has a history of engagement with European justice and home affairs issues. In particular, it seeks to ensure that individual rights are adequately protected in tandem with the development of efficient police and judicial co-operation in criminal matters.

2. JUSTICE's response highlights the following:
 - Moves to achieve more efficient judicial co-operation must also address current variations in the national laws that determine the powers and controls applicable to individual Eurojust staff. Restrictions on ECJ jurisdiction to review the activities of Eurojust compound these inequalities. Such disparities hinder effective co-operation between member states and result in variable levels of accountability.

 - Data protection standards under the third pillar also vary between member states. This disparity of protection for EU citizens is anomalous and should be addressed as a matter of urgency given the sensitive nature of data received and processed by EU agencies, notably Eurojust and Europol.

 - JUSTICE is concerned at the increasing overlap between the roles of senior judge and public prosecutor and the issues of impartiality this gives rise to.

 - The question of access to and custody of the Schengen Information System (SIS) needs to be addressed in the context of enhancing the efficiency of Eurojust, notably in respect of facilitating use of the European arrest warrant.

 - JUSTICE would support an expansion of Eurojust's role to include the monitoring of Europol, including agreements made by Europol with non-EU states.

 - Provision of adequate human and financial resources is a precondition to the success of Eurojust. Efforts to improve efficiency should include an assessment of whether present levels are sufficient.

 - A clear delineation of Eurojust's role vis-à-vis other bodies is needed to improve co-operation, visibility and the accountability of EU bodies and agencies.

- The imminent enlargement of the EU will present Eurojust with the same challenges faced by other EU organs. JUSTICE is particularly concerned about the increased risk of inaccurate translation/interpretation presented by the proposal to 'double translate/interpret' into and out of English.
- JUSTICE does not believe the case has been made for the creation of a European Public Prosecutor (EPP). It is concerned that a further proliferation of posts will simply distract public attention without addressing the structural issues that underlie the difficulties faced by Eurojust.

How successful has Eurojust been in its core objectives of co-ordinating investigations and prosecutions and improving judicial co-operation between Member States? Has it made effective use of the possibility of initiating investigations by national authorities?

3. The ability of Eurojust to meet its objectives will largely depend on it being adequately financed, and resourced by a number of permanent staff sufficient to offer the necessary support and to follow up its work. According to Eurojust's most recently available Annual Report¹, only six permanent staff and two temporary staff are based at the Eurojust offices in the Hague, as well as the 15 national members and some of their assistants. Clearly with only one member per state, assisted by such a small support staff, Eurojust's capacity is very limited. JUSTICE would urge the Committee to give consideration to expanding both the staff and budget currently available to Eurojust.

Has Eurojust been able to concentrate on the most serious forms of cross-border crime? Should it assume a more strategic role in the future?

4. The concept of 'serious cross-border crime' is a moving target. Previously computer viruses were treated as the highest priority; today counter-terrorism takes precedence over all else. The transience of this concept may be exacerbated by the concerns outlined above with regard to the resourcing of Eurojust and the danger of its work being dominated by individual member states' priorities. Support for a well-resourced permanent institution in The Hague would facilitate the setting of more durable objectives, without preventing Eurojust from responding to new challenges.

¹ Eurojust Annual report 2002. Available at www.eurojust.eu.int

5. JUSTICE would support Eurojust taking on a greater monitoring role in respect of Europol's work. Such an extension of Eurojust's functions would be comparable to the role of the judiciary in many civil law jurisdictions. It would secure greater legitimacy of Europol activities and would also be likely to improve the efficiency of police and judicial co-operation in the EU by assisting in the development of high standards of good practice and bolstering trust between member states.

To what extent is Eurojust facilitating the use of the European Arrest Warrant (EAW)?

6. The role of Eurojust under the EAW framework decision is principally advisory (at the request of the executing judicial authority, where multiple requests are made for the surrender of the same person under article 16 EAW) and as a recipient of information (where time limits for execution cannot be complied with under article 17 EAW). Similar provisions have been included in the draft framework decision applying the principle of mutual recognition to confiscation orders, and the Commission proposal for a European evidence warrant which applies mutual recognition to EU requests for evidence. Eurojust could make a valuable contribution, in collaboration with the European Judicial Network (EJN), to the success of the EU's mutual recognition programme through the provision of expert advice and information on the various legal systems and by establishing efficient communication between judicial authorities. These are vital components in developing the trust and knowledge that will determine the success of the mutual recognition programme.
7. Its ability to facilitate the operation of the EAW scheme is however limited by the fact that it does not have access to the SIS database in which alerts for requested persons are placed. This relates to the larger issue of the future of the SIS and its institutional position within the EU. If access to or custody of this database is to be granted to Eurojust under existing proposals for the development of SIS II, however, JUSTICE would have concerns about giving access to police officers that are seconded to Eurojust in accordance with article 2 of the Council Decision setting up Eurojust.

How effectively does Eurojust interact with other bodies, in particular: national judicial and prosecution authorities; third countries; other EU bodies, including Europol, the European Judicial Network (EJN) and the European Anti-Fraud Office (OLAF)?

8. The effectiveness of Eurojust's interaction with other bodies will depend in part on the availability of adequate resources. Co-operation may also be hindered by its geographical location: with Europol and Eurojust located in the Hague, interaction with OLAF and EJN, both of which are based in Brussels, may not be as effective.

9. Generally, JUSTICE notes the scope for competition between Eurojust and other bodies, notably EJM and OLAF. It is vital that the relative roles of the organisations be clearly defined to avoid confusion and overlap and to maximise effectiveness and visibility.
10. The three co-operation agreements recently made between the EU and the US do not incorporate a role for Eurojust. These are far-reaching and controversial agreements that span extradition and mutual assistance,² the transfer of Passenger Name Record (PNR) data,³ and a Europol/US agreement on the exchange of personal data.⁴ As considered above, JUSTICE would in principle support an expansion of Eurojust's functions, notably to include the supervision of Europol's activities. Those activities vis-à-vis third countries are particularly sensitive and may involve the exchange of sensitive personal data. The legality of Europol's activities in this area would be appropriately monitored by Eurojust. This would complement the role of the Joint Supervisory Body.

Are its procedures for protecting personal data, including data provided by national authorities and Schengen Information System (SIS) and Europol data, adequate?

11. JUSTICE remains concerned at the lack of uniformity that exists between the data protection rules in EU member states. The increasing willingness of member states to agree to exchange highly sensitive personal data has not taken sufficient account of the disparities in data protection rules. Rights of access to data for instance are determined according to rules of member state in which the request is made so that an EU citizen will receive less protection where his/her data is processed by Eurojust in one member state than in another.
12. This goes against the very notion of EU citizenship and the principle of freedom of movement. It contrasts sharply with the position under the first pillar where the 1995 Data Protection Directive applies, the Data Protection Supervisor is operative and the ECJ has jurisdiction to monitor the activities of the EC. A consistent and equal level of protection should be available to all of those whose personal data is processed by an EU body, agency or institution, irrespective of whether it is established under the first or third pillar.
13. JUSTICE supports the data protection provisions of the draft EU constitution, which guarantees the right to data protection at draft article II-8 and further addresses this issue

² Council Decision of 6 June 2003 concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters [2003] OJ L181/25.

³ The European Parliament has however announced that unless this agreement is withdrawn by Monday 19 April 2004, it will vote the following day to refer the matter to the ECJ.

at draft article I-50, calling for a European law to 'lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union Institutions, bodies and agencies, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of an independent authority'. We urge the committee in its scrutiny of secondary legislation enacted to fulfil these provisions to ensure that the highest standards of data protection are guaranteed wherever personal data is processed or exchanged by EU institutions, bodies and agencies and member states when acting pursuant to EU law.

Are any changes required in Eurojust's powers, procedures or budgetary basis to improve its effectiveness?

14. To achieve greater effectiveness, JUSTICE has highlighted above the need to ensure that adequate financial and human resources are allocated to Eurojust.
15. JUSTICE is however also concerned that police and judicial co-operation in the EU develop in a way that ensures that the activities of Eurojust and Europol are legitimate. From a common law perspective, the increasing overlap between the roles of the senior judge and public prosecutor gives rise to serious issues of impartiality. This is further exacerbated by the inclusion of police officers amongst the national members of Eurojust. The activities of Eurojust involve making decisions on key aspects of the criminal justice system including questions of jurisdiction and the transforming of material into admissible evidence. Such functions are properly limited to a judge or investigating magistrate in civil law jurisdictions. This line must not be blurred at EU level if the requisite trust is to be established to ensure effective co-operation and to ensure Eurojust can legitimately perform its tasks, including that of monitoring Europol.
16. JUSTICE continues to have concerns in relation to the disparity of rules that govern national members of Eurojust. At present the national laws of each member state apply to its national member, resulting in important differences in terms of the powers granted to members as well as the controls applicable to the exercise of those powers by national members. This will impact on both the efficiency and accountability of Eurojust's activities and is compounded by the special rules of the intergovernmental third pillar, which allow member states to exclude the jurisdiction of the ECJ entirely or to restrict references for

⁴ 15231/02 LIMITE EUROPOL 104.

preliminary rulings to its highest courts only.⁵ This creates what is often referred to as a 'variable geometry' between member states so that individual members of Eurojust will not be subject to the same overriding review by the ECJ. The ECJ is also denied jurisdiction to review the actions of Eurojust when it is acting as a college. The draft constitution holds the potential to partially remedy this defect by submitting acts of Eurojust to the jurisdiction of the ECJ, as well as the ECtHR, and granting the ECJ full jurisdiction in the field of justice and home affairs, with a limited exception for actions of national police forces.⁶

How will enlargement affect Eurojust's work? Are its relations with the remaining candidate countries satisfactory?

17. Eurojust will face the same challenges flowing from enlargement as the other EU institutions, notably with regard to translation and interpretation services. JUSTICE understands that, due to a shortage of translators and interpreters who are fluent in all the official languages of the EU, a decision has been taken to operate a system of 'double translation', that is into and out of English for every document. The nature of Eurojust's work means that even the simplest communication is likely to involve complex legal information and affect fundamental rights. The precise interpretation of a search and seizure warrant, for example, will be critical. This will therefore be a huge challenge for the efficiency of Eurojust and the accuracy of what it does.

How would Eurojust relate to a European Public Prosecutor, if one were set up?

18. In JUSTICE's view, the need to establish a European Public Prosecutor's Office has not yet been demonstrated⁷. Furthermore, the creation of new titles is not the most effective way to tackle either legitimacy problems or efficiency difficulties. Unless both of these issues are more adequately tackled, there is a danger that the proliferation of posts will simply distract public attention without addressing the structural issues.

⁵ Article 35 TEU.

⁶ Draft article I-7 directs the EU to seek accession to ECHR. Draft article III-270 grants the ECJ jurisdiction to review the legality of acts of bodies or agencies of the Union intended to produce legal effects vis-à-vis third parties.

⁷ For greater detail on JUSTICE's position on the establishment of a EPP, see JUSTICE contribution to The Forum for the Convention on the Future of the European Union, September 2002; JUSTICE submission to the House of Commons European Scrutiny Committee on the European Convention on the Future of Europe – draft articles on the area of freedom, security and justice, March 2003; and JUSTICE Response to the White Paper on 'The British Approach to the European Union Intergovernmental Conference 2003', October 2003. Available at www.justice.org.uk