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NOTE

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| from: | Presidency |
| to: | Council |
| Subject: | Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (EUROJUST) <i>- Orientation debate</i> |

The Commission's proposal on Eurojust introduces major changes in the structure and governance of Eurojust (Articles 10 to 18). The main changes concern the distinction between the operational and management functions of the College; the setup of an Executive Board; new provisions on annual and multi-annual programming; the representation of the Commission in the College acting as a Management Board and in the Executive Board; and detailed description of the responsibilities and tasks of the Administrative Director.

The main goal of the proposed reform of Eurojust structure is to allow Eurojust to perform its tasks more effectively and efficiently. In order to remove the administrative burden currently faced by the National Members, the Commission proposes to distinguish between the operational and administrative functions of Eurojust by separating the College's management functions into operational and non operational matters. When it exercises its management function in non-operational matters, the College shall also comprise two representatives from the Commission.

The Commission's proposal also introduces an Executive Board to take responsibility for administrative matters at Eurojust and to assist the College on these issues. The Executive Board will comprise the President and Vice-Presidents, one other national member, the Commission and the Administrative Director. The Administrative Director will not have voting rights.

The Commission's proposed governance structure was met with some reservation by delegates when discussed at the COPEN Working Party in November 2013, with many delegates raising concerns about the representation of the Commission in the College in terms of how the independence of Eurojust may be perceived. Delegates also considered that the functions of the College, Executive Board and Administrative Director were not clearly defined.

Subsequently, COPEN invited Eurojust to comment on the governance structure proposed by the Commission in the draft Regulation. In its written comments¹, Eurojust described how the current Council Decision had provided a minimum governance structure for Eurojust with Eurojust subsequently developing additional informal structures and adopting internal rules to deal with governance issues which had not been regulated by the Council Decision. It also noted that the Court of Auditors has repeatedly criticised the current governance structure of Eurojust in its annual audit reports since 2010.

On the governance structure presented by the Commission, Eurojust echoed the concerns raised by Member States, particularly around the Commission's representation in the College. It also considered that the Commission's presence on the Executive Board might not always be necessary and concluded that it would prefer to see the current informal structure of the Presidency Team which carries out the functions of an executive board be institutionalised under the new Regulation as an alternative approach which it considers to conform with the Common Approach on Decentralised Agencies.

¹ Doc 8488/14

The Commission has consistently argued that its proposal respects the operational independence of Eurojust, since its representatives would only be involved in management issues, not operational issues. It has also maintained that there are no objective reasons to deviate from the Common Approach on Decentralised Agencies with respect to the number of Commission representatives in the College and the Executive Board and their voting rights.

CATs at its meeting on 24th April 2014, discussed various models which could address the concerns raised by Member States and Eurojust. A clear majority of Member States supports an alternative model which would expand the existing Eurojust Presidency team to include a representative from the Commission and two other National Members (on rotation) to form a new Executive Board. This Executive Board would be responsible for overseeing the day-to-day administration of Eurojust and act as a preparatory body for the non-operational tasks of the College. The College could then focus on operational and policy work whilst retaining general control over administrative matters linked with operational issues, i.e. adoption of the budget, the annual report and annual and multi-annual work programmes in line with the overall aim of the Commission's proposal to improve the effectiveness and efficiency of Eurojust and reduce the administrative burden faced by National Members.

In light of the outcome of CATs, the Hellenic Presidency has prepared a revised text of the Commission's proposal which incorporates the model favoured by CATs. This text is attached in the Annex.

The Presidency invites the Council to endorse the outcome of the discussion at CATS and, on that basis, to use the text in the Annex as the starting point for future discussions at the COPEN Working Party.

CHAPTER I OBJECTIVE AND TASKS

Article 4

Operational functions of Eurojust

1. Eurojust shall:
 - a) inform the competent authorities of the Member States of investigations and prosecutions of which it has been informed and which have repercussions at Union level or which might affect Member States other than those directly concerned;
 - b) assist the competent authorities of the Member States in ensuring the best possible coordination of investigations and prosecutions
 - c) give assistance in order to improve cooperation between the competent authorities of the Member States, in particular on the basis of Europol's analyses;
 - d) cooperate and consult with the European Judicial Network in criminal matters, including making use of and contributing to the improvement of the documentary database of that European Judicial Network;
 - e) provide operational, technical and financial support to Member States' cross-border operations and investigations, including joint investigation teams.

2. In the exercise of its tasks, Eurojust may ask the competent authorities of the Member States concerned, giving its reasons, to:
 - a) undertake an investigation or prosecution of specific acts;
 - b) accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
 - c) coordinate between the competent authorities of the Member States concerned;
 - d) set up a joint investigation team in accordance with the relevant cooperation instruments;

- e) provide it with any information that is necessary to carry out its tasks;
 - f) take special investigative measures;
 - g) take any other measure justified for the investigation or prosecution.
3. Eurojust may also:
- a) provide Europol with opinions based on analyses carried out by Europol;
 - b) supply logistical support, including assistance for translation, interpretation and the organisation of coordination meetings.
4. Where two or more Member States cannot agree on which of them should undertake an investigation or prosecution following a request made under point (b) of paragraph 2, Eurojust shall issue a written opinion on the case. The opinion shall be promptly forwarded to the Member States concerned.
5. On request of a competent authority Eurojust shall issue a written opinion on recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition, provided it could not be resolved through mutual agreement between the competent national authorities or through the involvement of the national members concerned. The opinion shall be promptly forwarded to the Member States concerned.
6. The competent national authorities shall respond without undue delay to Eurojust's requests and opinions. Where the competent authorities of the Member States concerned decide not to comply with a request referred to in Article 4(2) or decide not to follow a written opinion referred to in Article 4(4) or (5), they shall inform Eurojust without undue delay of their decision and of the reasons for it. Where it is not possible to give the reasons for refusing to comply with a request because to do so would harm essential national security interests or would jeopardise the safety of individuals, the competent authorities of the Member States may cite operational reasons.

Article 5

Exercise of operational and other functions

1. Eurojust shall act through one or more of the national members concerned when taking any of the actions referred to in Article 4(1) or (2).
2. Eurojust shall act as a College:
 - a) when taking any of the actions referred to in Article 4(1) or (2):
 - (i) when so requested by one or more of the national members concerned by a case dealt with by Eurojust;
 - (ii) when the case involves investigations or prosecutions which have repercussions at Union level or which might affect Member States other than those directly concerned;
 - b) when taking any of the actions referred to in Article 4 (3), (4) or (5);
 - c) when a general question relating to the achievement of its operational objectives is involved;
 - d) when adopting the annual budget of Eurojust and exercise other functions in respect of Eurojust's budget pursuant to Chapter VI;
 - e) when adopting the annual and multiannual programme and the annual report on Eurojust's activities;
 - f) when electing the President and Vice- Presidents in accordance with Article 11;
 - g) when appointing the Administrative Director and where relevant extending his or her term of office or removing him or her from office in accordance with Article 16;
 - h) when adopting working arrangements concluded in accordance with Article 43;
 - i) when adopting rules for the prevention and management of conflicts of interest in respect of the national members;

- j) when preparing strategic reports, policy papers, guidelines for the benefit of national authorities and opinions pertaining to the operational work of Eurojust.
 - k) when taking any other decision not expressly attributed to the Executive Board in this Regulation or under the responsibility of the Administrative Director in accordance with Article 16;
 - l) when otherwise provided for in this Regulation.
3. When it fulfils its tasks, Eurojust shall indicate whether it is acting through one or more of the national members or as a College.
 4. The College may assign additional tasks to the Administrative Director and the Executive Board beyond those provided for in Articles 14 and 16 in line with its operational requirements.
 5. Without prejudice to paragraph 2, the College and the national members shall only deal with operational issues and with such issues that are inextricably linked with operational matters. It shall not deal with administrative matters or matters otherwise dealt with by the Executive Board or the Administrative Director, except as provided for in this Regulation.
 6. The College shall adopt its Rules of Procedure, which shall be approved by the Council after consent of the European Parliament.

CHAPTER II

STRUCTURE AND ORGANISATION OF EUROJUST

SECTION I

STRUCTURE

Article 6

Structure of Eurojust

The structure of Eurojust shall comprise:

- a) the national members;
- b) the College;
- c) the Executive Board;
- d) the Administrative Director.

SECTION III
THE COLLEGE

Article 10

Composition of the College

1. The College shall be composed of all the national members, the President and Vice Presidents.
2. The Administrative Director shall attend the meetings of the College, without the right to vote.
3. The College may, subject to the provisions of its Rules of Procedure, invite any person whose opinion may be of interest to attend its meetings as an observer.
4. The members of the College may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

Article 11

The President and Vice-President of Eurojust

1. The College shall elect a President and two Vice-Presidents from among the national members by a two thirds majority of its members.
2. The Vice-Presidents shall replace the President if he or she is prevented from attending to his or her duties.
3. The term of office of the President and the Vice-Presidents shall be four years. They may be re-elected once.
4. When a national member is elected President or Vice-President of Eurojust, his or her term of office shall be extended to ensure that he or she can fulfil his or her function as President or Vice-President.

5. When a national member is elected President or Vice-President of Eurojust he or she will no longer perform the functions of national member. The Member State concerned shall either second another suitably qualified person as a national member or increase the team of the national desk for the duration of the former's appointment as President or Vice-President.^{2 3}

Article 12

Meetings of the College

1. The President shall convene the meetings of the College.
2. The College shall hold at least one meeting per month. In addition, it shall meet on the initiative of the President or at the request of at least one fifth of its members.
3. The European Public Prosecutor shall receive the agendas of all College meetings and may be invited by the College to participate in such meetings in accordance with Article 10(3), without the right to vote, whenever issues are discussed which may be of relevance for the functioning of the European Public Prosecutor's Office.

Article 13

Voting rules of the College

1. **Unless stated otherwise, the College shall take its decisions by a majority of its members. The President and the Vice-Presidents shall also have a vote.**
2. **Each member shall have one vote. In the absence of a voting member, the deputy shall be entitled** to exercise the right to vote in accordance with Article 7(5).

² To be considered further by group.

³ Consideration will be given to whether salary should be paid from the EU budget along the lines of other EU agencies.

SECTION IV
THE EXECUTIVE BOARD

Article 14

Functioning of the Executive Board

1. The College shall be assisted by an Executive Board. The Executive Board shall be responsible for the day to day running of the College and will undertake the necessary preparatory work on administrative matters for the College's approval. It shall not be involved in the operational functions of Eurojust referred to in Articles 4 and 5.
2. The Executive Board shall consult the College when preparing the annual budget for Eurojust, the annual report and the annual and multi-annual work programmes and may obtain other non-operational information from the College, if necessary for it to be able to perform its tasks.
3. The Executive Board shall:
 - a) approve Eurojust's annual and multi-annual work programmes based on the draft prepared by the Administrative Director and forward to the College for adoption;
 - b) take all decisions on the establishment and, where necessary, the modification of Eurojust's internal administrative structures;
 - c) undertake any additional administrative tasks assigned to it by the College under Article 5(4).
 - d) prepare the annual budget of Eurojust for adoption by the College;
 - e) approve the annual report on Eurojust's activities and forward to the College for adoption. Once adopted, the annual report shall be sent to the to the European Parliament, national parliaments, the Council, the Commission and the Court of Auditors, and made public;
 - f) adopt the financial rules applicable to Eurojust in accordance with Article 52;

- g) appoint an Accounting Officer and a Data Protection Officer who shall be functionally independent in the performance of their duties;
 - h) adopt an anti-fraud strategy for Eurojust based on a draft prepared by the Administrative Director;
 - i) adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
 - j) ensure adequate follow-up to the findings and recommendations stemming from the internal or external audit reports, evaluations and investigations to the extent they are not linked with the operational work of the College, including those of the European Data Protection Supervisor (EDPS) and the European Anti-fraud Office (OLAF);
 - k) approve its rules of procedure which shall be adopted by the College.
4. The Executive Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Administrative Director and defining the conditions under which this delegation of powers can be suspended. The Administrative Director shall be authorised to sub-delegate these powers.
5. The Executive Board shall be composed of the President and Vice-Presidents of the College, one representative of the Commission, two other members of the College designated on a two year rotation system in accordance with the Rules of Procedure of the College and the Administrative Director.
6. The President of the College shall be the Chairperson of the Executive Board. The Executive Board shall take its decisions by a majority of its members. Each member, with the exception of the Administrative Director, shall have one vote.

7. The term of office of members of the Executive Board shall end when their term as national members, President or Vice-President ends.
8. The Executive Board shall meet once a month. In addition, it shall meet on the initiative of its Chairperson or at the request of the Commission or at least two of its other members.
9. The European Public Prosecutor may address written opinions to the Executive Board, to which the Executive Board shall respond in writing without undue delay.

Article 15

Annual and multi-annual programming

1. By [30 November each year] the College shall adopt a programming document containing a multi-annual and annual work programme, based on a draft put forward by the Administrative Director and approved by the Executive Board. It shall forward it to the European Parliament, the Council and the Commission. The work programme shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.
2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate which tasks have been added, changed or deleted in comparison with the previous financial year.
3. The Executive Board shall amend the adopted annual work programme when a new task is given to Eurojust. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Executive Board may delegate to the Administrative Director the power to make non-substantial amendments to the annual work programme, while keeping the Executive Board informed of any such amendment.

4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 56.

SECTION V

THE ADMINISTRATIVE DIRECTOR

Article 16

Status of the Administrative Director

1. The Administrative Director shall be engaged as a temporary agent of Eurojust under Article 2(a) of the Conditions of Employment of Other Servants of the European Union.
2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the Executive Board, following an open and transparent selection procedure in accordance with its Rules of Procedure. For the purpose of concluding the contract of the Administrative Director, Eurojust shall be represented by the President of the College.
3. The term of office of the Administrative Director shall be five years. By the end of this period, the Executive Board shall designate an external contractor to undertake an assessment which takes into account an evaluation of the performance of the Administrative Director.
4. The College, acting on a proposal from the Executive Board which takes into account the assessment referred to in paragraph 3, may extend once the term of office of the Administrative Director for no more than four years.
5. An Administrative Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The Administrative Director shall be accountable to the College.
7. The Administrative Director may be removed from the office only upon a decision of the College on the basis of a two-thirds majority of its members.

Article 18

Responsibilities of the Administrative Director

1. For administrative purposes, Eurojust shall be managed by its Administrative Director.
2. Without prejudice to the powers of the College or the Executive Board, the Administrative Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or from any other body.
3. The Administrative Director shall be the legal representative of Eurojust.
4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to Eurojust. In particular, the Administrative Director shall be responsible for:
 - a) the day-to-day administration of Eurojust and staff management;
 - b) implementing the decisions adopted by the College and the Executive Board;
 - c) preparing the annual and multi-annual work programme and submitting it to the Executive Board for approval and the College for adoption;
 - d) implementing the work programme and reporting to the Executive Board on its implementation;
 - e) preparing the annual report on Eurojust's activities and presenting it to the Executive Board for approval and to the College for adoption;
 - f) preparing an action plan following-up on the conclusions of the internal or external audit reports, evaluations and investigations, including those of the European Data Protection Supervisor and OLAF and reporting on progress twice a year to the Executive Board, the College, the Commission and the European Data Protection Supervisor;

- g) preparing an anti-fraud strategy for Eurojust and presenting it to the Executive Board for approval;
- h) preparing the draft financial rules applicable to Eurojust;
- i) preparing Eurojust's draft statement of estimates of revenue and expenditure and implementing its budget;
- j) exercising, with respect to the staff of the Agency, the powers conferred by the Staff Regulations⁴ on the Appointing Authority and by the Conditions of Employment of Other Servants⁵ on the Authority Empowered to conclude Contracts of Employment ("the appointing authority powers");
- k) supporting the operational work of Eurojust.

⁴ Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations for Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.6.1962, p. 1385, as amended, in particular, by Council Regulation 259/68, of 29 February 1968 (OJ L 56, 4.3.1968, p. 1), as itself subsequently amended.

⁵ Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations for Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.6.1962, p. 1385, as amended, in particular, by Council Regulation 259/68, of 29 February 1968 (OJ L 56, 4.3.1968, p. 1), as itself subsequently amended.