



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From : Presidency
To : CATS

Subject : Draft Council Conclusions on the tenth Eurojust Annual Report
(calendar year 2011)

Delegations will find enclosed the Draft Council Conclusions on the tenth Eurojust Annual Report (calendar year 2011).

Further to the invitation by the Presidency for delegations to send their written comments on the initial draft conclusions, a number of responses have been received. The current document contains a draft of the Council Conclusions revised by the Presidency following the submissions made by delegations.

CATS is invited to examine the draft Council Conclusions with a view to submitting them to Coreper/Council for adoption.

**Draft Council Conclusions on the tenth Eurojust Annual Report
(calendar year 2011)**

The Council,
having examined the Annual Report,

1. Welcomes the tenth Eurojust Annual Report (calendar year 2011)¹ and notes with appreciation that most of the objectives to be achieved in 2011 and as set out in the Annual Report for 2010 have been successfully attained or are in progress to be accomplished.
2. In particular, takes note of the initiatives undertaken by Eurojust in the course of 2011 to finalise the process of implementation of the Eurojust decision as well as that related to improving its organisational and operational capacities and stimulating coordination between the competent national authorities, third States and other European Union bodies;
3. Congratulates Eurojust on the increased number of coordination meetings the organisation of which responds to the demand for an operational activity to be undertaken by Eurojust and proves to be a valuable tool for the cooperation between the competent authorities of the Member States. At the same time, encourages Member States' competent authorities to continue using Eurojust as a case coordination centre. Calls on Eurojust to enhance the use of videoconferencing, where appropriate, in order to address time and financial constraints often quoted by the practitioners;

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4. Learns with interest about the new Eurojust initiative in 2011 to develop a coordination centre concept, a structure seeking to respond to the needs (...) of its increased involvement in supporting cross border investigations. The coordination centre concept at Eurojust foresees the presence in a single room and during the time of the operations of representatives of all states involved in the investigation, instant communication with the relevant national authorities at the judicial and prosecutorial level and immediate reporting on results and incidents, thus allowing for real time coordination and immediate decision making in all participating countries. Invites Eurojust to develop the use of this new tool and to report in relation to the forthcoming year on the practical use of this concept and its value for carrying out of the investigations;
5. Notes the increase of the number of JITs established in the course of 2011. Considers that (...) Eurojust's support to JITs in particular where they receive Union funding has proved valuable to Member States and has indicated that Eurojust becomes a reference point in setting up JITs. Asks Eurojust to further support the creation and implementation of JITs with a view to developing best practices and sharing information on judicial experience and case results; encourages Member States to make use of JITs operational capacities and the Commission to examine how to maintain at Eurojust level capacities to support financially JITs activities after the expiry of the current co-funding programme;
6. Notes that Eurojust reports on identified difficulties in relation to the collection and admissibility of evidence, pointing out to, in particular, the variety of applicable rules across the EU Member States, in particular regarding the interception of telecommunications, hearing of witnesses, use of videoconferences, undercover agents or gathering of DNA samples. Shares Eurojust's finding that this state of affairs constitutes a serious impediment to efficient cooperation between the competent authorities and carrying out of investigations. Calls on the European Parliament, the Commission and Member States to advance the work on the draft directive on a European Investigation Order in order to (...) ensure there is an effective and streamlined instrument to assist cooperation, investigation, and gathering of evidence across borders;

- 6a. Notes the increasing cooperation between Eurojust and Europol. Invites Eurojust to maintain its practice of associating Europol, wherever practicable, in the coordination process in respect of cases submitted to Eurojust, in particular by providing Europol with information about the submission of the case, which is relevant for its competences. In particular to seek complementarity between the work of Eurojust and Europol in operational support to national authorities in cases where their assistance has been sought.
7. Notes the indications put forward by Eurojust in respect of obstacles encountered in judicial cooperation. Expresses its concerns in particular where these indications point to the limited use by national authorities of the instruments provided for cooperation at European level, such as the EJN website, which should always cover all instruments of mutual recognition, allowing for the identification of competent authorities in another Member State. Therefore, urges the Member States to further enhance the assistance, also in respect of training and resources, provided for the competent authorities, aiming at addressing these obstacles. Encourages competent authorities to seek the help of Eurojust at an early stage of the proceedings;
8. Notes that the cases related to execution of EAWs still constitute as much as about 18% of all cases referred to Eurojust. Appreciates the expertise and assistance provided by Eurojust in the resolution of these cases, in particular where it comes to the provision of a Eurojust opinion in case of competing EAWs but also when providing other assistance to the competent authorities of the Member States. Further appreciates that practitioners are becoming increasingly familiar with the application of this instrument. However, remarks with regret that problems with the execution of EAWs identified by Eurojust are recurring from previous years. Therefore urges Member States to further disseminate among their practitioners information about the use of existing EAW tools such as the European Handbook on how to issue an EAW or the EAW Atlas on the EJN website and invites national authorities confronted with recurrent refusals and difficulties concerning the execution of requests to refer them to Eurojust in accordance with Article 7(3) of the Eurojust Decision; asks Eurojust to report about the implementation of this provision in its next Annual Report;

9. Notes the information provided by Eurojust related to the development and improvement of its statistical tools, in particular in respect of cases registered under the category of "other organised crime activities". Further encourages Eurojust to perfect its capacity to report on difficulties, solutions and trends in judicial cooperation in criminal matters between the Member States contributing to the identification of priorities in this policy area at European level;
10. Appreciates Eurojust's support (...) in enhancing (...) cooperation with third countries. Appreciates the added value of coordination meetings organised in the context of such cooperation as well as the role of Liaison Prosecutors seconded to Eurojust from third countries. Notices (...) Eurojust's initiative to examine the possibility set out by Article 27a of the Eurojust decision to establish Eurojust liaison magistrates in third countries. (...);
11. Welcomes the work which has been carried out by Eurojust in modernising the European Pool Against Organised Crime (EPOC) software used for the operation of the Eurojust Case Management System (CMS). Congratulates Eurojust for the creation of the standardised smart PDF Form through which information can be transferred and processed at Eurojust under Article 13 of the Eurojust decision and asks Eurojust to report on its use. Encourages Member States to ensure swift implementation, on this basis, of the obligation stemming from the new Eurojust Decision in respect of the exchange and provision of information to Eurojust and the development of the Eurojust National Coordination Systems (ENCS). Invites Eurojust to specify in its future annual report the extent of exchange of information between the agency and Member States. At the same time, the Council calls on Eurojust to ensure the timely finalisation of the EPOC IV project in order to allow for the use of the secure connection and transmission of information;

12. Reiterates its view about the significance of the efficient and prompt implementation of the new Council Decision on the strengthening of Eurojust, amending the Decision of 28 February 2002 setting up Eurojust. Notes with regret that by the end of 2011 only a few Member States appear to have fully complied with this obligation. Welcomes the support to Member States provided by Eurojust and the results achieved by the Informal Working Group of Eurojust. Invites Eurojust and Member States to complete the implementation process and to advance operational cooperation accordingly as soon as possible, and the implementation of the secure connection allowing for access to the CMS at national level. Invites Eurojust to report on the implementation of Article 13a with respect to the information and feedback provided to national authorities as a result of the processing of the information received from national authorities;
13. Notes the agreement regarding the determination of new premises for Eurojust by 2015. Appreciates the engagement of all parties involved in this process, and in particular the Dutch government and the city of The Hague, and expresses its wish that the process be finalised as foreseen;
14. Invites Member States, the relevant Council preparatory bodies and the Commission to analyse the Annual Report with a view to identifying possible courses of action to enhance the effectiveness of judicial cooperation and coordination in Europe;
15. Invites Eurojust to report in its next Annual Report on the implementation of these conclusions.