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NOTE

from:	Ms Michèle Coninsx, President of Eurojust
to:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) - Invitation to Eurojust to provide a written contribution to the Working Party on Cooperation in Criminal Matters COPEN (Eurojust Regulation)

Delegations will find attached a letter from Ms Coninsx, President of Eurojust, for attention of Mr Papamatthaiou regarding the "Invitation to Eurojust to provide a written contribution to the Working Party on Cooperation in Criminal Matters COPEN (Eurojust Regulation).

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The Hague, 31 March 2014

Invitation to Eurojust to provide a written contribution to the Working Party on Cooperation in Criminal Matters COPEN (Eurojust Regulation)

Dear Mr Papamatthaiou,

On behalf of Eurojust, I would like to thank you for your invitation of 24 January 2014 to present Eurojust's observations on the European Commission's Proposal for a Eurojust Regulation to the Working Party on Cooperation in Criminal Matters COPEN on 07 April 2014.

We further appreciate the opportunity to provide insight into Eurojust's expertise and experience regarding several matters relevant to Member States in the context of the new Regulation on Eurojust. At several of its College meetings, Eurojust has reflected on the European Commission's Proposal and its impact on Eurojust's governance and operational work. With the Eurojust contribution enclosed, including statistics, we hope to comprehensively respond to the questions of delegations referred to us by the letters of 31 January and 18 March 2014. Some additional remarks on the draft text of the Eurojust Regulation are also made that require the attention of the legislator. This contribution represents the view of the College; however, not every individual viewpoint of National Members is addressed.

We would also like to reiterate that Eurojust is confident that the results of the ongoing mutual evaluations of the implementation of Eurojust's current legal framework in the Member States will certainly provide an important stimulus to its development, as will the evaluation of Eurojust, which is to be commissioned in 2014.

Yours sincerely,

Michèle Coninsx
President of Eurojust

Encl: Eurojust contribution to the Proposal for a Eurojust Regulation, dated 26.03.2014

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EUROJUST CONTRIBUTION

TO THE

PROPOSAL FOR A EUROJUST REGULATION

This contribution represents the view of the College; however, not every individual viewpoint of National Members is addressed.

In January 2014, Eurojust has been invited by the Greek Presidency to attend the meeting of the COPEN Working Party devoted to the Proposal for a Eurojust Regulation that will take place on 7 April 2014. Moreover, the Presidency provided a list of questions for Eurojust to consider with a view to elicit Eurojust's views on significant aspects of the Proposal and provide a basis for a written response to the COPEN Working Party.

Eurojust's replies to these questions are set out below. The replies present Eurojust's remarks and suggestions based on its experience and practice and provide, where relevant, explanations, figures and illustrations related to Eurojust current practice.

Topics covered:

A) Tasks and competences (Articles 2 and 3)
B) Operational functions
C) Status of National members
D) Powers of national members
E) Structure and Governance
F) On Call Coordination
G) ENCS
H) Information exchange
I) Joint Investigations Teams
J) Relations with other bodies and External relations
K) Data protection
L) EPPO
M) Other provisions

Annex:

1. Joint Investigation Teams (JITs): Eurojust's central role in JITs today
2. Statistics on
    - Eurojust coordination meetings;
    - European Arrest Warrants cases registered at Eurojust;
    - Article 13 notifications to Eurojust;
    - JITs cases (including funding) dealt with by Eurojust;
    - Use of OCC at Eurojust (2013 only).

Eurojust's preliminary remarks

Eurojust notes that the adoption of a Proposal from the Commission for a Regulation on Eurojust ('the Proposal') is aimed at improving the legal framework and, ultimately, at strengthening the work of Eurojust in the fight against cross-border crime.

Although in substance most provisions of the Eurojust Decision are maintained, the Proposal introduces some significant changes. Consequently, many issues need to be carefully considered as they will have a significant impact on the functioning and efficiency of Eurojust.

Moreover, the Proposal was presented together with the Proposal for a Regulation on the European Public Prosecutor's Office (EPPO). Both texts provide for an important involvement of Eurojust in the functioning of the EPPO. Such an involvement raises serious questions related to the capacity and resources needed from Eurojust to provide support to the EPPO, which should not adversely affect Eurojust's core business.

Finally, Eurojust is also looking forward to the final outcome of the ongoing Sixth Round of Mutual Evaluations, which will certainly prove useful in the course of the negotiations.

A) Tasks and competences (Articles 2 and 3)

1) Are you satisfied with the list of crimes included in the Annex?

The direct reference to the list of forms of serious crime for which Eurojust is competent in Annex 1 to the Regulation is most welcome and preferable to the current indirect reference to the scope of competence of Europol.

The lists of crimes for which Eurojust and Europol will be competent on the basis of their respective Regulations should be completely aligned so as to, *inter alia*, support the searches for information as foreseen by the two draft Regulations granting access for Eurojust to Europol's information and vice-versa. However, the Eurojust's list should not be shortened and the introduction of new forms of crime such as *insider dealing and financial market manipulation* and *genocide, crimes against humanity and war crimes* should be maintained because it corresponds to current practice. It is also suggested to align the list contained in Annex 1 and the list of 32 offences included in Article 2(2) of the Framework Decision of 13 June 2002 on the European Arrest Warrant (EAW), with a view to preventing the emergence of difficulties for practitioners.

2) Can you develop your concerns with relation to the abolition of Article 4(2) of the EJD? Do you see any practical difficulty?

Eurojust is concerned by the reduction of its material scope of competence consecutive to the abolition of Article 4(2) of the Eurojust Decision, *i.e.* the provision allowing Eurojust to act in cases concerning "other types of offences" (than those formally included in the list), at the request of a competent authority and in accordance with its objectives.

The proposed limitation seems not in line with other provisions of the Proposal such as Articles 2, 4(5) and 21(6) that refer to the (current) larger competence of Eurojust and do not limit its action to cases involving crimes covered by the list of Annex 1.

By depriving the national authorities of the flexibility they have to ask for the support of either Eurojust or the European Judicial Network according to the needs of the specific case, this limitation would represent a step backwards in the support successfully provided by Eurojust and is likely to create difficulties in practice for the facilitation of judicial cooperation for the following reasons:

1) Current cases in which Eurojust's support is requested by the national authorities and for which Article 4(2) of the Eurojust Decision provides a legal basis for the involvement of Eurojust would be excluded from Eurojust's competence. This concerns *e.g.* requests to facilitate the execution of MLA requests or the execution of decisions based on of mutual recognition instruments (especially EAW) irrespective of the crime type that can or cannot be included in the list; requests for information on rules of criminal procedure, on persons, on the existence and state of play of criminal proceedings, as well as in the support offered to the organisation of witness interviews and hearings, setting-up of videoconferences, etc. Instead, national authorities would need to verify Eurojust's competence in every case before asking its support.

2) It can be anticipated that some of the cases currently registered at Eurojust as "Article 4(2) cases" relate to crime types that are included in the list of Annex I and for which Eurojust should therefore continue to be competent in the future. However, many other cases concerning serious offences will be excluded from Eurojust's competence and, in any case, the determination of the exact definition of offences referred to in the list in the concerned Member State and, as a consequence the determination as to Eurojust's competence with respect to these crimes, will certainly raise complex questions. For information, in recent years, Eurojust has dealt with serious offences not necessarily included in the list, such as:

    - Misappropriation of funds/ private sector corruption;
    - Embezzlement;
    - Certain forms of economic crimes, which are difficult to clearly identify at the beginning of an investigation or are classed as administrative or civil offences rather than crimes in some Member States, *e.g.* tax evasion (that in some Member States cannot be considered real fraud, but can be very serious as well), crimes connected to bank loans which are often cross-border in nature, etc.;
    - Breach of duty in the administration of the property of another;
    - Abuse of office by public officials;
    - Concealment/arson;
    - Robbery; and
    - Offences committed in several countries by lone individuals not connected to organised criminal groups but with a high potential of danger.

3) The unclear terminology used in the closed list in the definition of the forms of crime as well as the lack of common understanding at EU level of the "seriousness" of a crime results in a lack of legal certainty as to the scope of Eurojust's material competence.

4) The question arises as to which entity would have final decision making authority as to whether Eurojust is competent or not to act in a specific case (the national authorities? Eurojust? Who else?). The uncertainty created could in turn give rise to legal challenge, which could jeopardise the ability of Eurojust to provide operational support.

5) The closed list lacks the necessary flexibility that would allow Eurojust's competence to adjust to new emerging forms and types of serious crimes.

6) There is a serious risk that national authorities, if faced with a lack of legal certainty and clarity as to the scope of Eurojust's competence, might bypass Eurojust altogether, instead reverting to the former channels of judicial cooperation for example to organise coordination meetings outside Eurojust without its support.

   The introduction in the draft Regulation of a provision corresponding to Article 4(2) of the Eurojust Decision would adequately prevent the risks underlined. It would also be more in line with the spirit and purpose of Article 85 TFEU which, compared to former Article 31 TEU, aims to reinforce the role of Eurojust and not to reduce or undermine it.

In this respect, it is worth recalling the initial position of the Commission in the Communication on the Establishment of Eurojust (COM(2000) 746 final) according to which Eurojust would have a rather broad sphere of competence, going beyond 'serious organised crime' considering that this is reasonable and also compatible with the principle of subsidiarity, "because the need for coordination of prosecution under the regime of 15 (now *28*) national legal systems is a general one and not confined to specific forms of crime. The Commission supports an approach that would allow Eurojust to deal with all 'major criminal offences' in respect of which judicial legal assistance may be required". The Commission continues its reasoning saying that "it seems neither necessary nor appropriate to list expressly, in the act of foundation, all forms of crime Eurojust should deal with. Otherwise, the inclusion of any additional offence into the sphere of competence would require a new Council decision" (now *a new Regulation*). These considerations, developed by the Commission before the adoption of the Eurojust Decision of 2002, seem to be still relevant and valid today under the new regime introduced by the Lisbon Treaty.

3) Do you see any concrete application of Article 3(4)?

Article 3(4) of the Eurojust Proposal reproduces, usingnearly identical wording, the current Article 3(3) of the Eurojust Decision. In recent years, Eurojust has been contacted by OLAF or by a Member State on the basis of this provision. For instance, in a major PIF case, OLAF requested Eurojust's assistance for the execution of a letter rogatory asking for urgent bank account searches and seizures in a Member State. In another case, a Member State requested the lifting of the parliamentary immunity of a member of the European Parliament with a view to initating criminal proceedings based on a suspicion of fraud against the financial interests of the Union. The competent national authority asked for Eurojust's assistance in order to facilitate this request to the European Parliament. Moreover, in other PIF-cases that were opened at the request of only one Member State, Eurojust's intervention often enabled the identification of cross-border links and the extension of these 'one Member State'-cases to more Member States.

In light of this experience, Article 3(3) of the Eurojust Decision (corresponding to Article 3(4) of the Eurojust Proposal) has an added value and so should be retained. Furthermore, this would remain the case in the event of the adoption of the EPPO Proposal. Even though the latter Proposal foresees the establishment of an EPPO that will be *exclusively* competent for PIF-offences, Eurojust's assistance will still be necessary, and will be particurarly beneficial to Member States not participating in the EPPO Regulation.

4) Do you have any other comments and suggestions regarding the tasks and competence of Eurojust as envisaged by the Proposal?

Competence on PIF crimes:

With regard to the exclusion of Eurojust's competence in respect of the crimes for which the EPPO is competent ("PIF crimes") as indicated in Article 3(1), Eurojust would like to suggest clarification of this provision also in the light of other provisions of the Proposal that clearly entrust Eurojust with a competence in this field (*e.g.* Recital (5), the list of crimes included in Annex 1, which now includes the "crime against the financial interests of the Union", and Article 41, which defines the support that Eurojust is requested to offer to the EPPO).

Moreover, Eurojust's competence for PIF crimes would be essential if the EPPO is established by enhanced cooperation. The latter will have a major impact on Eurojust's involvement, in particular in transnational cases that include EPPO and non-EPPO Member States, third countries or international organisations. If the purpose of Article 3(1) is to confirm the *primary* competence of the EPPO to coordinate investigations and prosecutions of crimes against the financial interests of the Union, rather than to exclude *any* role for Eurojust in this area, it would be helpful to clarify this in the text.

"On its own initiative":

The explicit reference to tasks exercised by Eurojust "*on its own initiative*", and not only at the request of the competent authorities of the Member States (Article 2(3)), confirms the "pro-active" dimension of Eurojust's mandate, already implicitly foreseen by the Eurojust Decision, which does not limit the role of Eurojust to a reactive one.

In its daily work, Eurojust is already playing this proactive role with a view to supporting the national authorities in their investigations and prosecutions. For instance, on the basis of the information supplied by Europol or by the Member States' competent authorities – in accordance with Article 13 of the Eurojust Decision or simply in the framework of a regular and spontaneous exchange of information with the national authorities – Eurojust's national members or the College can take actions, such as recommending that national authorities take steps to start an investigation where necessary, involving the competent authorities of Member States initially not implicated in a case, organising a coordination meeting where need be or ensuring the follow-up of decisions taken during coordination meetings. Similar actions can be taken by Eurojust when relevant information is provided by OLAF.

This explicit reference to the possibility for Eurojust to act on its own initiative under Article 2(3) of the Proposal derives from Article 85(1) TFEU (according to which "*Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities […], on the basis of operations conducted and information supplied by the Member States' authorities and by Europol*") and can be read in combination with other provisions of the Proposal, such as the possibility to take into account any information "*collected by Eurojust itself*" (Article 2(2)(a)), the concept of *"serious crime requiring a prosecution on common bases"* (Article 2(1), *see* below) and the provision on the exchange of information between Eurojust and the Member States (Article 21, replacing Article 13 of the Eurojust Decision).

"Serious crime requiring a prosecution on common bases":

The concept of *"serious crime requiring a prosecution on common bases"*, introduced by the Lisbon Treaty and reproduced in the Proposal (Article 2(1)), raises questions as to its actual meaning and requires further clarification in the text. The explanation contained in Recital 9 only refers to situations in which Eurojust is already competent pursuant to the Eurojust Decision and will continue to be competent according to the draft Regulation (Articles 3(3) and (4)). Therefore, it is possible that this interpretation might be too narrow, particularly in view of the overall intention of the Proposal to give Eurojust an enhanced, pro-active role as reflected in other provisions of the Proposal.

While it is true that the wording *"serious crime requiring a prosecution on common bases"* has already been established in Article 85(1) TFEU, it would seem necessary to explain how this term should be understood, especially considering that the proposed Eurojust Regulation will become law directly applicable in the participating Member States.

B) Operational functions

5) Are you satisfied with the list in Article 4?

The introduction of the new provision on operational, technical and financial support to Member States' cross-border operations and investigations, including JITs (Article 4(1)(e)) is a positive step forward for Eurojust's action (*see* further below the question on JITs).

With regard to the words "*recurrent refusals or difficulties*" in Article 4(5) of the Proposal (current Article 7(3) of the Eurojust Decision), Eurojust would propose replacing them by the terms *"recurrent refusals and recurrent difficulties"* so as to avoid linguist uncertainties in some versions, including in the English version, which do not exist in other language versions (*e.g*. Spanish, Romanian and Portuguese). Moreover, Eurojust's experience has shown that there are difficulties in ascertaining whether these "*recurrent refusals or difficulties*" refer to (*i*) one request, (*ii*) more than one request or (*iii*) whether this assessment should be carried out on a case by case basis, regardless of the number of requests. Eurojust would therefore suggest that the text be clarified in this respect.

C) Status of national members

6) As the requirement in relation to the regular place of work (Article 7(1)): how does it work in the current situation? Will the Proposal improve efficiency?

The new requirement regarding the regular place of work of all deputies and assistants at Eurojust (Article 7(2)) needs careful consideration by the legislator as to its practical consequences. The current Eurojust Decision, which requires that the national member shall have his/her regular place of work at the seat of Eurojust, correctly reflects the needs for Eurojust as an organisation to be able to rely on the national members' presence to function effectively.

Eurojust considers however that the regular place of work of the deputy and assistant should be a matter for decision by the Member States in order to provide the most effective support to the practitioners of the Member State concerned taking into account their practical needs.

For information, this is the current composition of the Eurojust National Desks:

2 National Desks are represented with 0 persons in The Hague (CY, MT).

13 National Desks are represented with 1 person in The Hague (BE, DK, EE, IE, EL, HR, LV, LT, LU, HU, PT, SK, FI).

8 National Desks are represented with 2 persons in The Hague (CZ, ES, AT, PL, RO, SI, SE, UK).

3 National Desks are represented with 3 persons in The Hague (BG, DE, IT).

1 National Desk is represented with 4 persons in The Hague (FR).

1 National Desk is represented with 5 persons in The Hague (NL).

Eurojust would like to comment on three other issues related to the status of national members:

a) The current obligation for Member States to notify Eurojust and the General Secretariat of the Council of the designation of national members, deputies and assistants (Article 41 of the Eurojust Decision) and, in case of removal from office before the end of the term, to indicate the reasons for it (Article 9(1) of the Eurojust Decision), does not find correspondent provisions in the draft Regulation. In order to ensure transparency for the appointments and removals of all College members and certainty as to their term of office, it is suggested to include an obligation for the Member States to inform Eurojust about the designation of national members, deputies and assistants and their term of office, and in case of removal from office before the end of the term, an obligation to explain the reasons for such decision.

b) As to the term of office of national members and deputies ("*at least four years, renewable once*" under Article 10(2), and extendible once after the entry into force of the Regulation, irrespective of a previous extension, for the current national members only under Article 66 on transitional arrangements), it is suggested that the wording be reconsidered for the sake of clarity and certainty and with a view to ensure continuity in the work of the National Desks. The corresponding provision (point 10.) of the Common Approach on decentralised agencies, according to which "the duration of the term of office of board members should be four years renewable" (thus it does not specify that this is limited to one renewal) and "all parties should increase efforts to limit turnover of their representatives in the boards, in order to ensure continuity of the board's work" should be taken into account.

c) In addition, there is a need to clarify the status of national members acting as national authorities and, more in general, the applicable status of national members. In fact, while current Article 2(4) of the Eurojust Decision makes an indirect reference to the status of national members (deputies and assistants) that "shall be subject to the national law of their Member State as regards their status", Article 7(3) of the Proposal establishes directly the status stating that "the national members and deputies shall have a status as a prosecutor, judge or police officers of equivalent competence […]". Such reference to the status does not seem to meet sufficiently one of the main declared objectives of the Proposal to "improve Eurojust's operational effectiveness through homogeneously defining the status and powers of National Members" (point 3.3. of the Explanatory Memorandum).

D) <u>Powers of national members</u>

7) Do you have any suggestions for amendments as to the powers of national members? Is the list complete?

8) If Member States were allowed to have broader powers, as in the current Council Decision, would that pose any problems in practice?

As to the issue of the <u>alignment of national members' powers as foreseen by Article 8</u>, as well as the fact that there is no longer reference to the national members acting in their capacity as competent national authorities in accordance with national law, the College is confident that the legislator will take into careful consideration all Member States' positions. Although it is recognised that this provision is likely to improve consistency in national members' powers, it raises serious concerns which reflect the specificities of some national systems and imply the need for more flexibility.

In any event, the text would benefit from clarification of some concepts contained in Article 8 which appear very generic (e.g. "issue/execute" and "urgent cases when timely agreement cannot be reached"), vague (e.g. "competent international authority") or not defined (e.g. "mutual legal assistance request", "mutual recognition request" and "investigative measures")[1].

More importantly, Eurojust is concerned about the potential consequences that could derive from the alignment of powers and sees the need to clarify in the text (1) that Article 8 cannot entail, for any Member State, a reduction of the powers currently granted to their national member and (2) that it should not deprive Member States of the possibility to grant in the future to their national members additional powers which are not foreseen in the Regulation[2].

As a final remark, Eurojust would like to express its opinion that, if the aim of the legislator is to strengthen the powers of Eurojust, then this is more readily achievable by strengthening the overall coordination role of Eurojust rather than by reinforcing the powers of the national members as individual "judicial authorities" (*see* Article 8). Eurojust observes in this respect that the Proposal still limits its role to "supporting and strengthening" coordination and cooperation between national

[1] As also pointed out at the Eurojust seminar, see in particular Outcome of workshop 2, pp. 25-27 of the Report on the Eurojust Seminar (Council doc. 17188/1/13 REV 1 EUROJUST 135 COPEN 226).

[2] *See* also Outcome of workshop 2, pp. 25-27 of the Report on the Eurojust Seminar (Council doc. 17188/1/13 REV 1 EUROJUST 135 COPEN 226), significant and interesting comments and examples made in that respect.

authorities (*see* Articles 2 and 4). The opportunity offered by Article 85(1) second part TFEU to enhance Eurojust's unique ability to coordinate investigations and prosecutions in serious cross-border cases in a more incisive manner has not been seized in the Proposal. A possible suggestion in this regard, would be to clarify the wording of the relevant provisions (Eurojust shall "coordinate the competent national authorities"), as also suggested by Recital 11), in order to exclude any possible restriction of the mandate of Eurojust which might be inferred from the phrase "support coordination".

E) <u>Structure and Governance</u>

9) Which tasks would you suggest to entrust respectively to the College, the Executive Board and the Administrative Director?

10) Do you consider that the model proposed will work effectively in practice?

<u>Governance structure in the Eurojust Council Decision and internal practices</u>

The Eurojust Council Decision devotes only two provisions to the high-level design of the governance of Eurojust (Articles 28 and 29). This high-level design is based on three main formalised structures: the College, the President and the Administrative Director.

On the one hand, and in accordance with Article 28(1) of the Eurojust Council Decision, *'the College shall be responsible for the organisation and operation of Eurojust';* and on the other hand, *'the Administrative Director shall be responsible, under the supervision of the President, for the day-to-day administration of Eurojust and for staff management' (Article 29(5)).*

This high-level design is completed with the reference to the role of the President that *'shall exercise his duties on behalf of the College and under its authority, direct its work and monitor the daily management ensured by the Administrative Director'*. In accordance with the Eurojust Rules of Procedure, *'the President calls and presides over the meetings of the College, represents Eurojust and signs all official communication on behalf of the College'*.

These Articles describe a minimum governance structure for Eurojust; however, do not elaborate further on a clear division of roles and responsibilities to be performed by different actors. In practice, Eurojust has addressed this situation by (1) creating additional informal structures, the College Teams, by (2) adopting internal rules and by (3) developing more efficient working and decision-making procedures.

Structural, regulatory and procedural measures have streamlined and shaped a more efficient organisation:

a) From a structural point of view:

- 10 College Teams prepare and assist the College in its work and decision-making. The Teams are composed by members of the College volunteering on the basis of their expertise on different areas. The division in College Teams already reflects the main areas of work of the College: operational, policy and management matters.

  The Presidency Team deserves special attention as this Team is functioning 'de facto' as an informal 'Executive Board'. Chaired by the President, assisted by the two Vice-Presidents and supported by the Administrative Director, the Presidency Team
  - facilitates the work of the College;

- advises and prepares decision-making in the College;
- gives effect and monitors implementation of the decisions and policies adopted by the College;
- initiates and prepares policies;
- oversees progress against strategic goals (related to the Multi-annual and annual programming);
- monitors the daily management ensured by the Administrative Director;
- decides on possible escalation of managerial risks/problems to the College;
- acts on behalf of the College in between meetings;
- handles routine business;
- serves in a representative and leadership role.

The Presidency Team meets regularly (weekly) in order to coordinate and ensure a coherent approach to the work of the College from an operational, policy and management perspective. In 2013, the Presidency had 30 meetings. The other 9 College Teams met in 63 occasions.

- Other 'ad hoc' structures are created for short-term projects/activities in order to give a quick response and react in a flexible way to needs not foreseen in the Annual Work Programmes.

b) From a regulatory point of view:

The College adopted in 2007 a Decision regulating the relationship between the College, the President and the Administrative Director. This College Decision aimed at bringing clarity on the responsibilities of the Administrative Director and the respective roles of the College and the President mainly in managerial matters (i.e. human resources, budget). This Decision has helped streamlining and reducing the mere managerial matters dealt with by the College.

c) From a procedural point of view:

Since 2011, the College has taken concrete practical steps in order to increase the time devoted by the College to operational work while alleviating the College from its involvement in administrative matters.

This was achieved by the adoption of several College Decisions striving to make a more efficient and effective use of time and resources and improve decision-making:

- The College Decision on the so-called 'operational Tour de Table' adopted in 2011 aimed at enhancing the work of the College on operational matters, encouraging a constructive and efficient exchange of information during College plenary meetings.

- Several College Decisions adopted in 2012 regulated in more detail the functioning of the College, the use of written procedures and information points.

In 2013 this has resulted in a more effective and efficient work of the College. The differentiation between operational and Management Board meetings of the College is a current practice at Eurojust.

- In 2013, the College limited the number of Management Board meetings to 10 (9 ordinary and 1 extraordinary) with a total duration of proximately 30 hours in the whole year. For 2014, the College has foreseen only 8 Management Board meetings and it is expected that improved planning may lead to limit the number of Management Board meetings in 2015 to a maximum of 6.

  Additionally, the College made use of the possibility of receiving electronically points for information – those related to Management Board matters were 21 points (a 20% of the total number of points for information distributed). The College did not make use of written procedures on Management Board matters; however, in 4 occasions, the College gave opinions through preparatory consultation procedures that allowed reducing time allocated for debates in the College on concrete proposals on Management Board matters.

  The areas of activity of the College as Management Board were related, in concrete, to the adoption of the Multi-annual Strategic Plan, Annual Work Programme, Budget and Establishment Plans, Multiannual Staff Policy Plans, modification of the Establishment Plan, Final Accounts, Budget Transfers, implementation of budgets, adoption of Financial Regulations, decisions related to the future premises of Eurojust, oversee the implementation of actions plans related to the recommendations of the Internal Audit Service and the European Court of Auditors and on the discharge procedure of the Administrative Director.

  Representatives of the European Commission attended, as observers, 4 meetings of the College as a Management Board on the basis of the Memorandum of Understanding of 20 July 2012 between Eurojust and the European Commission.

- In the course of 2013, the College organised 30 operational meetings (22 ordinary and 8 extraordinary) with a total duration of approximately 130 hours in the whole year.

  Additionally, the College made use of the possibility of receiving electronically points for information without any need for discussion – those related to operational matters were 80 points. This was completed with the extensive use of written procedures (10 written procedures throughout the year related to operational or policy matters) and preparatory consultation procedures that allow reducing time allocated for debates in the College on concrete proposals (16 consultation procedures were launched on operational or policy matters in 2013).
  The operational meetings are devoted to the casework and policy work:

  - In 2013, the College discussed, e.g. operational issues related to delays in the execution of European Arrest Warrants; a report on non-conviction based confiscation; the use of GPS devices for cross-border criminal investigations and also had presentations on interesting operational cases as the ‘Playa’ case.

- In 2013, the College also discussed or adopted a number of documents related to policy matters e.g. the Annual Report; operational priorities; development of an Operations Manual; a concept for Centres of Expertise at Eurojust; an Awareness Raising Strategy for Eurojust; a project to post Liaison Magistrates of Eurojust to third States; a Strategic project on environmental crime; the Draft Memoranda of Understanding with Frontex, EMCDDA and Interpol; the Eurojust–Europol Joint document on cooperation in practice, Joint Annual Report with Europol, Eurojust Contact Points to Europol Focal Points; the EU Policy Cycle on organised crime and involvement in EMPACT and Operational Action Plans; the proposal for a Regulation on Eurojust and on the establishment of the European Public Prosecutor's Office; and the impact at Eurojust of the results of the 6th Round of Mutual Evaluations in the Member States on the implementation of the Eurojust Council Decision 2009 and the EJN Council Decision.

It is important to highlight that the members of the College are active contributors to the activities carried out by the College and the College Teams. A reference should be made to the time invested by National Members in the preparation of College plenary meetings, both as operational body and as Management Board, as well as to the valuable and substantial input provided through written and consultation procedures. These tasks are performed in addition to the operational work of each individual National Desk.

Nature of the work of Eurojust and key principles

An important element of the governance design of Eurojust is its hybrid nature, where National Members (prosecutors, judges or police officers of equivalent competence) appointed by national authorities, with their status under national law, join efforts with European Union staff working under the authority of an Administrative Director. Their respective contributions to the achievements of the common objectives of Eurojust vary depending on the category of work performed.

A governance model for Eurojust should consider that the activities of Eurojust could be clustered in three main categories interrelated and interconnected:

Casework: it relates to the activities performed by the National Desks and the College when dealing with the content of cases and related to the primary objective of Eurojust as stated in Article 85(1) TFEU. It refers to cases related to criminal investigations brought to Eurojust by way of requests from national authorities, but also to casework originating from information received, in particular, from Member States, Europol and OLAF.

Policy work: this category deals with activities requiring an institutional approach or a process-oriented approach across the whole organisation.

The policy work is twofold: it consists, on the one hand, of producing policies and guidelines intended to regulate the operational work of Eurojust (e.g. internal rules on the preparation of a Eurojust opinion in case of conflicts of jurisdiction, Operations Manual or the development of the Case Management System); and, on the other hand, of developing products such as strategic reports, casework-related studies, policy papers, opinions on draft legislative instruments, the carrying out of strategic projects focusing on specific areas of judicial cooperation (such as the projects on drug trafficking and trafficking in human beings) with a view to analysing Eurojust's casework, identifying areas for improvement and promoting best practices in judicial cooperation.

A common denominator to all activities carried out under the heading of policy work is the case-related nature as the work is largely based on the casework carried out by National Desks.

Administrative work: this category refers to administrative tasks such as financial management, organisation and management of administrative support and other supporting services providing indirect support to the casework.

Lessons learned during 12 years of operational experience of Eurojust should be borne in mind. Elements which have proven useful and functional should, where possible, be retained. The consideration of a minimum set of requirements and key principles is essential for a governance model for Eurojust, given the nature of Eurojust's core tasks. If only one of these requirements or principles is not met, the legitimacy, effectiveness and credibility of the organisation could be compromised.

The minimum requirements are as follows:

- Independence and responsibility of the National Members for the content and progress of casework;
- Supervision of casework performed by the national authorities only;
- Ownership by the National Members of policy work.

The following key principles should also be considered when proposing a possible new structure for Eurojust: legitimacy; efficiency; effectiveness; simplicity; rapidity in decision-making; cost-efficient structure; adherence to sound principles of public governance; clear definition of tasks and responsibilities between actors; prevention of conflicts of interest between actors; ensuring the highest standards of expertise for all governance roles and flexibility to adapt to the future setting up of the European Public Prosecutor's Office *'from Eurojust'*.

It is of the utmost importance that the College remains owner of the policy work of Eurojust, as it is closely related to the casework carried out by the National Desks.

The proposal for a Regulation on Eurojust

General principles of public governance

The main principles on sound public governance are to be kept in mind:

- The existence of checks and balances between different roles within the organisation;
- Congruence of role, mandate and accountability of the different actors;
- Clear separation of roles to be performed by different person(s) within the organisation.

A governance structure should consider three main roles:

- The Supervisory role: supervises the organisation, checks if the strategy is fit for current and future challenges and monitors high-level performance.
- The Executive role: directs the organisation in accordance with its mission and vision and is responsible and accountable for the day-to-day management of the organisation.
- The Operator role: executes the core and supporting processes of the organisation.

Eurojust believes that there is need to clarify the respective roles and responsibilities of the actors involved in its current governance. The Internal Audit Service of Eurojust, the European Court of Auditors and the European Parliament have also expressed the need for improvements.

The Proposal preserves the status quo in leaving the College as an operational body (operator role) and as a Management Board (supervisory role). The establishment of an Executive Board (executive role) is proposed to assist the College in its management functions and allow for streamlined decision-making on non-operational and strategic issues. No mention is done in the Proposal to the Administration of Eurojust.

With reference to the proposed distinction between the operational and the management functions of the College, the Proposal (Article 10) maintains the current situation: National Members would continue to be entrusted with a dual or even triple role including supervisory, operational, and in some cases also executive functions (for members of the Executive Board).

The Proposal is not entirely aligned with the Common Approach of the EU institutions on decentralised agencies. When applying the Common Approach the legislator was allowed to consider the specificities of each Agency.

Recital 12 of the Proposal states that its aim is '*to provide Eurojust with an administrative and management structure that allows it to perform its tasks more effectively and respects the principles applicable to Union agencies whilst maintaining Eurojust's special characteristics and safeguarding its independence in the exercise of its operational functions; to this end, the functions of the National Members, the College and the Administrative Director should be clarified and an Executive Board established'*.

The proposed deviation from the Common Approach is addressing the specificities of Eurojust and the need for different solutions when designing its governance; however, the proposed governance model would require further streamlining in order to reconcile, as far as possible, a complex organisational set-up and principles of sound public governance.

Purpose of the proposal

Recitals (12), (13), (14), (15) and (16) of the Proposal contain the purpose and guiding principles of the proposed reform on structure and governance. These principles support a concrete governance structure developed further in the legislative text. If a more streamlined structure was to be considered, these guiding principles would need to be re-assessed.

The Proposal correctly identifies current challenges regarding the governance of Eurojust; however, more efficient and pragmatic structural changes may be explored based on the practical experience and solutions already identified by Eurojust throughout the years to cope with the difficulties deriving from its structure.

Eurojust acknowledges the attempt to reduce the administrative burden on national members and to distinguish the role of the actors according to the functions exercised; however, Eurojust is particularly concerned about the impact that the proposed structure would have on its operational work.

The guiding principles of the Proposal will be considered below.

Division of roles and responsibilities between different actors

The respective roles and responsibilities of the College, the Executive Board, the European Commission and the Administrative Director are not always defined in an appropriate and clear manner.

Competences of the College

Recital 12 states that '*[…] the functions of the National Members, the College and the Administrative Director should be clarified and an Executive Board established*' and Recital 13 adds that the aim of the Proposal is '*to clearly distinguish between the operational and the management functions of the College, reducing the administrative burden on national members to the minimum so that the focus is put on Eurojust's operational work*'.

a. Competences of the College as an operational body:

Article 10(1)(a) refers to the College as an '*operational body when exercising its operational functions under Article 4'*; additionally, Article 16(1) states that '*the Executive Board shall not be involved in the operational functions of Eurojust referred to in Articles 4 and 5'*. Furthermore, Article 16(2)(g) states that '*any other decision not expressively attributed to the College in Articles 5 or 14 […]'* shall be taken by the Executive Board. The reference to Articles 4 and/or 5 as part of the operational functions of the College has to be consistent and in line with the objectives of the Proposal.

Article 4 refers to 'operational functions of Eurojust' and Article 5 to the 'exercise of these operational functions' by National Members and/or by the College. Articles 4 and 5 do not contain a list of competences of the College as an operational body. Only Article 5(2) empowers the College to act in certain cases by taking actions listed in Article 4.

If the Proposal is based on exhaustive lists of competences for all the bodies involved in Eurojust governance, Article 5 does not contain a list of competences that would justify weekly meetings of the College as an operational body if the exceptional use of the current Article 7 of the Eurojust Council Decision is also taken into account.

However, there are two main ways of completing the overview of competences of the College as an operational body:

- Article 5(2)(c) states that '*Eurojust shall act as a College when a general question relating to the achievement of its operational objectives is involved*'. This reference should be developed in order to specifically refer to the tasks of the College in the area of policy work. However, this clause could also justify that the College (as operational body) discusses management matters impacting operational work (e.g. human resources allocated to support casework), matters that may be part of the competences of the College as Management Board.

  Additionally, this clause of the draft Regulation seems to have been directly copied from the Eurojust Council Decision where Article 3 referred specifically to the objectives of Eurojust (which is not the case in the Proposal). This clause should now refer to the terminology of the proposed Article 4 ('operational functions of Eurojust').

- Article 5(2)(d) states that '*Eurojust shall act as a College when otherwise provided for in this regulation'*. This clause requires clarification. It should be identified which competences, throughout the text, are attributed to the College as an operational body. This clause contradicts Article 16(2)(g) and the concept of Articles 4 and/or 5 as exhaustive lists of competences of the College as an operational body.

It is not apparent throughout the proposal which references to the College are done to its role as operational or management body. For example, the College decisions on request to access to personal data (Article 32(6)), the transfers of personal data to third countries or international organisations (Article 45(3)), or the adoption of rules for posting of liaison magistrates (Article 46(4)) seem to be competences of the College as operational body.

b. Competences of the College as a Management Board:

Article 14 of the Proposal does not contain an exhaustive list of competences of the College as Management Board since a number of other competences are set out under other provisions, such as:

- Decision of the College to allow more deputies and assistants to have their regular place of work at Eurojust (Article 7(2));
- Amendments to the Annual Work Programme in case of new tasks (Article 15(3));
- Adoption of the Annual Report of Eurojust (Article 18(4)(e));
- Respond to written requests of the EPPO (Article 41(8));
- Adoption of implementing arrangements on SNEs (Article 54(2));
- Receive the results of the evaluation of the Commission (Article 56(2));
- Adoption of the rules implementing Regulation 1049/2001 (Article 60(2));
- Adoption/change of the Seat Agreement (Article 65)

There are other matters that require further clarification regarding the competences of the College as a Management Board:

- Article 14(1)(f) and (l): there is no qualified majority required to adopt Rules of Procedure (regulating the work of the College as operational body and Management Board) and rules on the prevention and management of conflicts of interest in respect of its members (also rules affecting operational functions of the College). References to the approval by the Council of such rules are not foreseen either. This could affect the legitimacy of the rules and their implementation.

- Article 14(1)(j): Regarding the adoption of working arrangements with third States and international organisations, Article 43 refers to Article 38(1) on its scope which says that '*in so far as necessary for the performance of its tasks, Eurojust may establish cooperative relations with […]"*. This competence seems to be a mere operational function of the College.

- Article 14(2): The College shall adopt (in accordance with Article 110 of the Staff Regulations) a decision delegating the relevant appointing authority powers to the Administrative Director. This delegation to the Administrative Director may be contradicted by Article 16(2)(c) by empowering the Executive Board to adopt implementing rules in accordance with Article 110 of the Staff Regulations. The adoption of implementing rules is normally delegated to the Administrative Director.

Competences of the Executive Board

Recital 14 states that the Proposal *'improves Eurojust's governance and streamlines procedures by establishing an Executive Board to assist the College in its management functions and to allow for streamlined decision-making on non-operational and strategic issues'*

According to Article 16 of the Proposal an Executive Board shall be established to assist the College; however, it should not be involved in operational functions.

The Common Approach on Decentralised Agencies states that *'in order to streamline the decision-making process in the Agency and contribute to enhancing efficiency and effectiveness, a two level governance structure should be introduced, when this promises more efficiency. In addition to the Management Board, giving general orientation for the Agency's activities, a small-sized Executive Board, with the presence of a Commission's representative, should operate and be more closely involved in the monitoring of the agency's activities […] '.*

In line with this the Common Approach, Eurojust considers that the current practice at Eurojust where the Presidency Team acts as 'de facto' Executive Board should be institutionalised. This formalised Presidency Team would prepare both the activities of the College as a Management Board and as an operational body. This will help decision-making and further enhancing efficiency and effectiveness at all levels and not only at a managerial one.

The Presidency Team would still be composed by the President and the Vice-Presidents, and supported by the Administrative Director. Exceptionally, and for the preparation of the meetings of the College as Management Board, the Presidency Team could meet in an extended format including representatives of the European Commission, attending such meetings of the Presidency Team as observers (see point 2.3.4.1 c)) every three months.

This structure would ensure that the operational and policy activities of the College (and not only the managerial ones) will keep profiting from the existence of a permanent body, meeting regularly, supporting and ensuring coherence in the overall work of the College.

This institutionalised Presidency Team may be empowered to:

- facilitate the work of the College;
- advise and prepare decision-making in the College;
- give effect and monitor implementation of the decisions and policies adopted by the College;
- oversee progress against strategic goals (related to the Multi-annual and annual programming);
- initiate and prepare policies;
- monitor the daily management ensured by the Administrative Director;
- decide on possible escalation of managerial risks/problems to the College;
- act on behalf of the College in between meetings;
- handle routine business;
- serve in a representative and leadership role.

Regarding the specific competences of Article 16 of the Proposal (and keeping in mind that they refer to the role of the Executive Board related to the competences of the College as Management Board) there should be clarity on the following matters:

- If an Executive Board is created to '*assist*' the College or the Presidency Team is institutionalised, the 'executive' nature of its competences should be highlighted. Some of the functions listed in Article 16(2) are merely preparatory or advisory to the work of the College or the Administrative Director while decision-making is foreseen regarding the adoption of some rules (punctual decisions) only. Additional areas allowing delegation of decision-making from the College should be considered.

- Following the idea of an institutionalised Presidency Team, its competence should be extended also to operational and policy matters, and the references in Articles 16(1) and (2)(a) to Article 14 should be completed and extended to Articles 4 and 5.

- Comments to Article 16(2)(c) are above and comments to Article 16(2)(e) and (f) are below.

- Article 16(2)(g) *('take any other decision not expressively attributed to the College in Article 5 or 14 or under the responsibility of the Administrative Director in accordance with Article 18'*) is a 'residual clause'.

  This broad provision would allow the Executive Board to take any decisions that are not expressly attributed to the College in the exercise of its operational, policy or management functions despite the limit to its competence referred to in Article 16(1). As said along this document there are 'other' functions expressively attributed to the College in the Proposal and not listed under Article 5 or 14 that could be affected by this provision. Only the College could be empowered by such a residual clause being delegation always feasible.

- Article 16(3) on the provisional decisions to be adopted by the Executive Board in case of urgency on administrative and budgetary matters and subject to confirmation by the College should also be clarified.

Competences of the Administrative Director

Recital 16 states that in order *'to ensure an efficient day-to-day administration of Eurojust the Administrative Director should be its legal representative and manager, accountable to the College and the Executive Board. The Administrative Director should prepare and implement the decisions of the College and the Executive Board'*.

The Proposal [also] appears to narrow the role of the Administrative Director which might weaken the efficiency of Eurojust.

The Proposal seems to weaken the role of the Administrative Director by confining it to the implementation of administrative tasks (Article 18) and reducing the extent of his/her responsibility:

- Article 16(2)(e) regarding decision-making on the establishment/modification of Eurojust's internal administrative structures may be limiting the role of the Administrative Director. Article 18(1) states that '*Eurojust, for administrative purposes, shall be managed by the Administrative Director'*, Article 18(2) refers '*to his/her independence in the performance of*

his/her duties […]' and Article 18(4) to '*his/her responsibility for the implementation if the administrative tasks assigned to Eurojus*t'. This competence (the establishment and modification of internal administrative structures) is one of the most important ones in order to manage the Administration.

- Article 16(2)(f) stipulates that '[…] *the Executive Board shall assist and advise the Administrative Director in the implementation of the decisions of the College, with a view to reinforcing supervision of administrative and budgetary management'*. This should be clarified as it can have great impact on the performance of the tasks attributed to the Administrative Director.

- According to Article 14(3) of the proposal, the College may temporarily suspend the appointing authority powers delegated to the Administrative Director. This provision could affect the smooth implementation of the Staff Regulations and should be assessed with regard to Eurojust's liability (Article 64).

Finally, Article 18(4) does not contain an exhaustive list of competences of the Administrative Director. Other competences are included in Articles 14(2) on the delegation of the appointing authority role; Article 15(3) delegating to the Administrative Director the adoption of non-substantial changes to the Annual Work Programmes and the preparation and adoption of the report on budgetary and financial management of Article 51(2) and used for the discharge procedure.

Composition of the different bodies and accountability

Composition:

a. Status of President and Vice-Presidents

The President and the Vice-Presidents of the College are entrusted a prominent EU-related mission in the interest of the institution. Such mission requires full-time dedication. The President (and Vice-Presidents) are still heading the respective National Desk; however, cannot devote all the necessary time to operational activities. Therefore, National Authorities may consider the possibility of reinforcing the composition of the National Desks once a National Member is performing an institutional role.

Additionally, the Proposal (Article 18(3)) explicitly designates the Administrative Director as the legal representative of Eurojust but does not clarify the role of the President of Eurojust in his/her capacity as representative of Eurojust in its operational functions, for instance when signing working arrangements with third countries or international organisations. This should be clarified in the Regulation or by Rules of Procedure.

b. Composition of the Executive Board:

Article 14(4) should be amended in order to reflect the proposal of Eurojust and include a reference to the actual composition of the Presidency Team and the possibility of inviting the European Commission to attend, as an observer, meetings in preparation of the Management Board of Eurojust.

Article 14(4) refers to the *'other member of the College'* appointed for two years following a rotation system (Article 14(5)) as member of the Executive Board. It is unclear which would be the status of this member of the College and which should be the appointment mechanism. It is also unclear how an additional member would help the efficiency and effectiveness of this entity.

c. Role of the European Commission:

In accordance with Recital 15 and in order *'to ensure non-operational supervision and strategic guidance of Eurojust, it is stipulated that the Commission is represented in the College when it exercises its management functions and in the Executive Board'*.

According to the Proposal, the European Commission is represented, as full member with voting rights, both in the Executive Board (one vote) and in the College (two votes) exercising its management functions (Articles 16(4) and 10(1)).

The role of the European Commission in the College should be clarified since operational and management aspects are often closely interlinked in Eurojust's activities and there is a need to preserve the ownership of the College on its operational and policy work:

- With specific regard to annual and multi-annual programming (Article 15), Eurojust is of the opinion that the scope of strategic programming and related responsibilities should be further clarified, since strategic programming also includes objectives pertaining to the operational and the policy work of Eurojust.

  Therefore, the College should hold a preeminent position in the adoption of its multi-annual and annual programming while Article 15(1) allows the European Commission to influence the nature and focus of the operational and policy work of Eurojust by allowing it to provide a binding opinion.
- The College should be entrusted with the adoption of its Annual Report (Article 18(4)(e) and 55) and the election of its President and Vice-Presidents (Article 14(1)(k)) as part of its operational functions, without interference of the European Commission.

The role of the European Commission in the Executive Board should be reconsidered in light of the proposal of Eurojust extending the competence of an Executive Board to operational and policy matters. The possibility of inviting the European Commission to attend, as an observer, meetings of the Executive Board in preparation of the Management Board of Eurojust is proposed.

d. Appointment and removal of the Administrative Director:

The new proposed appointment procedure for the Administrative Director (Article 17(2)) pre-empts the involvement of the College if an adequate number of candidates to choose upon is not presented to the College. The assessment of the Administrative Director evaluating his performance after 5 years would be carried out by the European Commission only and excludes any participation of the College (Article 17(3)).

Additionally, the College, appointing the Administrative Director, should also have the possibility of initiating the dismissal. The initiative for a dismissal could be granted to a third of the members of the College and not only to the European Commission (Article 17(7)).

e. The role of the EPPO:

Articles 12(3) and 16(7), allowing the participation of the EPPO in all the College meetings (operational and Management Boards) and the meetings of the Executive Committee, should be clarified.

Accountability

According to Article 17(6) of the Proposal, the Administrative Director should be accountable to both the College and the Executive Board. In accordance with the Common Approach, the Administrative Director should be accountable to the Management Board only.

There is no reference in the Proposal to the accountability of the Executive Board to the College and how this could be exercised.

Other matters

Eurojust as a European Union Agency

According to Article 1(3), Eurojust shall '*enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings'*.

Eurojust suggests that Article 1(3) be replaced with the simpler provision laid down in the current Eurojust Council Decision (Article 1), according to which Eurojust shall have legal personality.

Appointment of the Data Protection Officer

The proposal include contradicting provisions regarding the appointment of the Data Protection Officer (DPO): according to Article 14(1)(i), the DPO is to be appointed by the College whereas, according to Article 31(1), the DPO shall be appointed by the Executive Board. For reasons of independence, the Data Protection Officer should be appointed by the Administrative Director as it is the case now on the basis of Article 17 of the Eurojust Council Decision.

References to the Consolidated Annual Activity Report, Annual Report and report on the budgetary and financial management

The proposal includes, in several provisions, references to its Consolidated Annual Activity Report on activities (Article 14(1)(c)), Annual Report on activities (Article 18(4)(e) and 55(1)) and Report on the budgetary and financial management (Article 51(2)).

These provisions are not fully aligned to each other. More clarity and more consistency would be needed and the exact contents of the reports should be clarified.

F) On Call Coordination

11) Can you describe your experience with the OCC? Please provide statistics and any related analysis

12) Do you consider the OCC to be useful tool? Is it cost efficient?

Eurojust's availability to assist national authorities when operational needs so dictate has been a feature of Eurojust since its creation, years prior to the launch of the OCC. The OCC is a tool designated only for use in emergencies and so is used only in exceptional circumstances. During office hours, the national authorities call the Eurojust landline. Outside normal office hours, most National Desks can be and are actually contacted directly on their mobile phones, without the

involvement of the technical infrastructure of the OCC. This is a long-established practice which was used for years prior to the launch of the OCC, and is illustrative of National Desks' availability on a permanent basis. Examples of such availability have been coordination centres organised over the weekend and during the night. Such calls are of course not recorded as OCC calls even though they serve the same purpose.

Eurojust implemented the OCC to comply with its obligations under the revised Eurojust Decision. The implementation has been achieved by technical means: it involves auto-forwarding of incoming phone calls to OCC representatives, combined with 24/7 availability of members of each National Desk at Eurojust. The cost of setting up the OCC has been 50,000 Euros, and the average monthly running cost of the OCC is 300 Euros.

The OCC was launched in June 2011. The Member States were informed about its introduction through the National Desks at Eurojust by means of a letter from the President of Eurojust with an accompanying OCC leaflet. Since then, the National Desks have continued to inform their respective national authorities about the possibilities offered by the OCC. The OCC is operated with two phone numbers, one international phone number and a Dutch phone number. The international phone number makes it possible for practitioners from different Member States to call the same number without any charges for the caller. For calls from third States and in cases where toll-free numbers cannot be used, the Dutch phone number is available. All calls are forwarded to the same endpoint at Eurojust and automatically answered by the Call Manager. The system directs calls from a Member State to the OCC representative of that Member State. The National Desks decide internally who will be on duty at any given time. If the origin of the call cannot be identified, the caller is welcomed in English and asked to choose a Member State. The call is then forwarded to the OCC representative of the selected Member State. If the OCC representative does not answer the call, the caller is welcomed in an official language of the selected Member State and can leave a voicemail message as well as be connected to an OCC representative of another Member State.

Below are the statistics in relation to the OCC from its launch in June 2011 until 31 December 2013:

- Calls to the OCC: 463
- Calls that reached OCC representative or their voicemail: 71
- Calls abandoned by caller (before reaching either the OCC representative or the voicemail and probably as result of misdials): 392
- Calls that have been handled by the National Desks: 28

Feedback obtained from the National Desks that have handled OCC calls, shows that these have, in some cases, resulted in urgent operational measures being taken such as wiretaps being ordered and authorised during the weekend, urgent MLA requests being requested, transmitted and executed, the execution of EAWs being expedited, and judicial issues resolved promptly. In one case two calls from two different authorities in France were received through the OCC. One concerned the facilitation of the execution of an EAW to one Member State and the other concerned the urgent transmission and execution of an MLA request to another Member State. In this case, the use of the OCC contributed to the fast reaction of the French National Desk and the other National Desks involved, and the judicial issues were resolved promptly. In this case, Eurojust's assistance could have been requested by use of regular channels of communication (OCC calls were received during regular working hours). In another case, as a result of an OCC call, wiretaps were ordered and authorised during the weekend in Netherlands at the request of another Member State. In a murder case, where an EAW had been issued, the OCC call resulted in information being received from the embassy of one Member State in another Member State, and assistance being requested during the

weekend. However, in many other cases OCC calls proved not to be relevant (*e.g*. mostly misdials or calls routed incorrectly from a third State).

Eurojust's experience with the OCC has shown that the availability of the OCC representative on a 24 hour/7 day basis creates difficulties for some National Desks as they lack the necessary human resources.

Eurojust's experience with the OCC has also shown that the OCC system as implemented by Eurojust, and noted above, shows insufficient flexibility and regard to the needs and size of the individual National Desks. In order to make the OCC more effective, flexible and better suited to the differing needs and different sizes e of the National Desks, it is proposed that, albeit all National Desks being part of the OCC, the OCC could be implemented differently by individual National Desks. For instance, while some National Desks could remain linked to the single OCC contact point at Eurojust as they do now, others could implement the OCC by making themselves equally available 24/7 on their mobile phone. In light of this proposal, Eurojust respectfully suggests the deletion of the phrase *"through a single OCC contact point at Eurojust"* (Article 19(1)) as it limits alternative means of providing OCC.

G) ENCS

13) Do you consider that the ENCS – in the countries in which it was implemented – brings added value to the work of Eurojust? Has it helped clarifying the roles of EJN and Eurojust? Has it helped bringing together national competent authorities?

Article 20 of the Proposal, current Article 12 of the Eurojust Decision, remains almost identical, except for a simplification in the wording of paragraph 7 which does not affect its content. Hence, the structure and functions of the ENCS remain the same.

The practical experience on the ENCS is somewhat limited due to the fact that the state of implementation of the ENCS varies between Member States. In the Member States where the ENCS has been implemented and is already operational, it has proved to be useful and to bring added value to Eurojust's work. For instance, in some Member States, all (designated) members of the ENCS are located within one office, *e.g.* the Office of the Prosecutor General, while in other Member States members have been appointed from a number of different institutions within the Member State. Some Member States have appointed additional authorities to be members of the ENCS or have invited them to ENCS meetings, for example OLAF contact points, as they considered these additional authorities essential in facilitating cooperation between Eurojust and other institutions. In some Member States, for example, there are many EJN contact points and they are all members of the ENCS, while in others only up to three are members of the ENCS. The practical tasks of the ENCS include the exchange of information between Eurojust and the national judicial authorities, the dissemination of general information about Eurojust in the Member States and assistance to practitioners in specific cases, sometimes even including participation in coordination meetings at Eurojust. In general, meetings of the ENCS are held or planned on a regular basis in addition to informal personal contacts between their members.

With a view to reflecting the differing needs of the individual Member States and ensuring the ENCS has the flexibility to adapt to the reality of the situation in each Member State, for example in relation to EJN contact points being part of the ENCS, Eurojust proposes that a new sub-paragraph d) be added under paragraph 2 with the wording "*other European Judicial Network contact points and other relevant competent national authorities*", and that the current sub-paragraph d) of the Proposal becomes sub-paragraph e). Consequently, it is also proposed that paragraph 6 should read as follows: "6. In order to meet the objectives referred to in paragraph 5, persons referred to in paragraph 1 and in points (a), (b) and (c) of paragraph 2 shall, and persons referred to in points (d)

and (e) may be connected to the Case Management System in accordance with this Article and Articles 24, 25, 26 and 30. The connection to the Case Management System shall be at the charge of the general budget of the European Union."

Eurojust proposes to use the ENCS to develop new synergies with the EJN (*see* further below the question related to the EJN).

H) Information exchange

14) Do you consider that the information provided on the basis of Article 13 has brought added value? Please provide statistics and any related analysis.

15) What is your opinion on the extension of information exchange in Article 21 of the proposal for a Regulation?

Article 21 on exchanges of information with the Member States and between national members (current Article 13 of the Eurojust Decision) is almost identical in most of its paragraphs. However, it appears less restrictive in terms of the cases about which national competent authorities are to inform their national members (Article 21(5), current Article 16(6) of the Eurojust Decision). In theory, therefore, Member States should be able to send more information to Eurojust to be input into the Case Management System (CMS). However, as the current Annex concerning the minimum types of information to be transmitted to Eurojust where available is no longer referred to in Article 21 (Article 13(10) of the current Eurojust Decision), Eurojust considers that there is a risk that information provided by Member States might diverge hugely, with regards to both the quantity and types of data provided.

During the period July 2011 - December 2013[1], Eurojust received a total of 327 notifications under Article 13 of the current Eurojust Decision. Of these notifications, 123 are linked to registered cases, and amongst these, 54 cases have been opened as a result of such notifications[2]. The remaining 204 notifications were regarding Temporary Work Files not linked to a case registered at Eurojust. It is worth noting, however, that in general Article 13 notifications represent only a minor fraction of the information reported to Eurojust via "normal casework" (during the same period of time, a total of 2970 cases have been registered at Eurojust). The following is an example of a case opened at Eurojust as a result of a notification under Article 13 of the current Eurojust Decision.

The Italian National Desk at Eurojust received a notification under Article 13 of the current Eurojust Decision from their home authorities in relation to a case concerning an organised criminal network involved in trafficking of stolen vehicles involving at least six Member States. Further to this notification, Eurojust was able to identify links to other two cases previously referred to Eurojust and coordinate the activities of the authorities involved through several coordination meetings with a view to preparing a joint action day. On the joint action day, a coordination centre was set up at Eurojust. Europol was also involved. The coordinated action by Eurojust also allowed for a preliminary decision between the Italian authorities and those of the other Member State involved with a view to preventing a possible conflict of jurisdiction and related *ne bis in idem* issue.

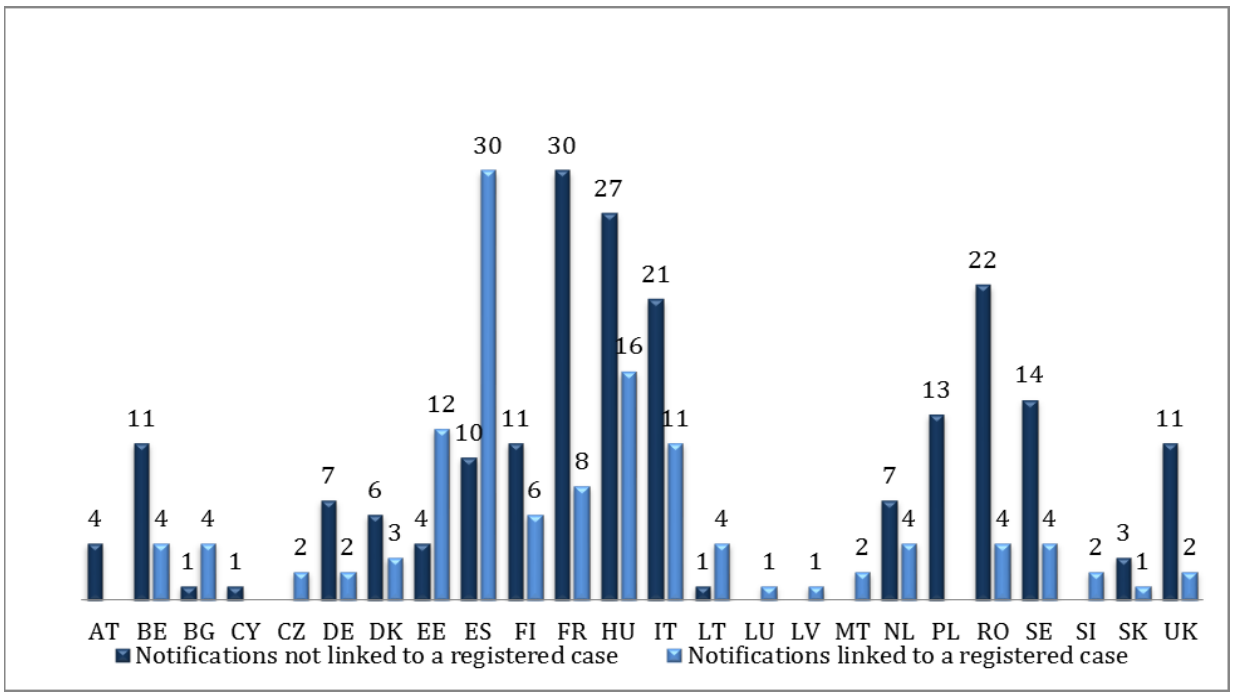
[1] Data as at 10 March 2014.

[2] Further to consultation with CAU and DPO, 21 NDs were consulted with a view to ascertaining the number of cases opened as a result of an Article 13 notification. 18 NDs replied (one of which was unable to provide a complete reply).

Article 21(9) of the Proposal states that the information referred to in this Article shall be provided in a structured way *as established by Eurojust*. This last part of the provision is new. Eurojust considers that clarification is needed as to the meaning of paragraph (9). So far, this form has been used by Member States to transmit information in slightly more than half of the notifications provided.

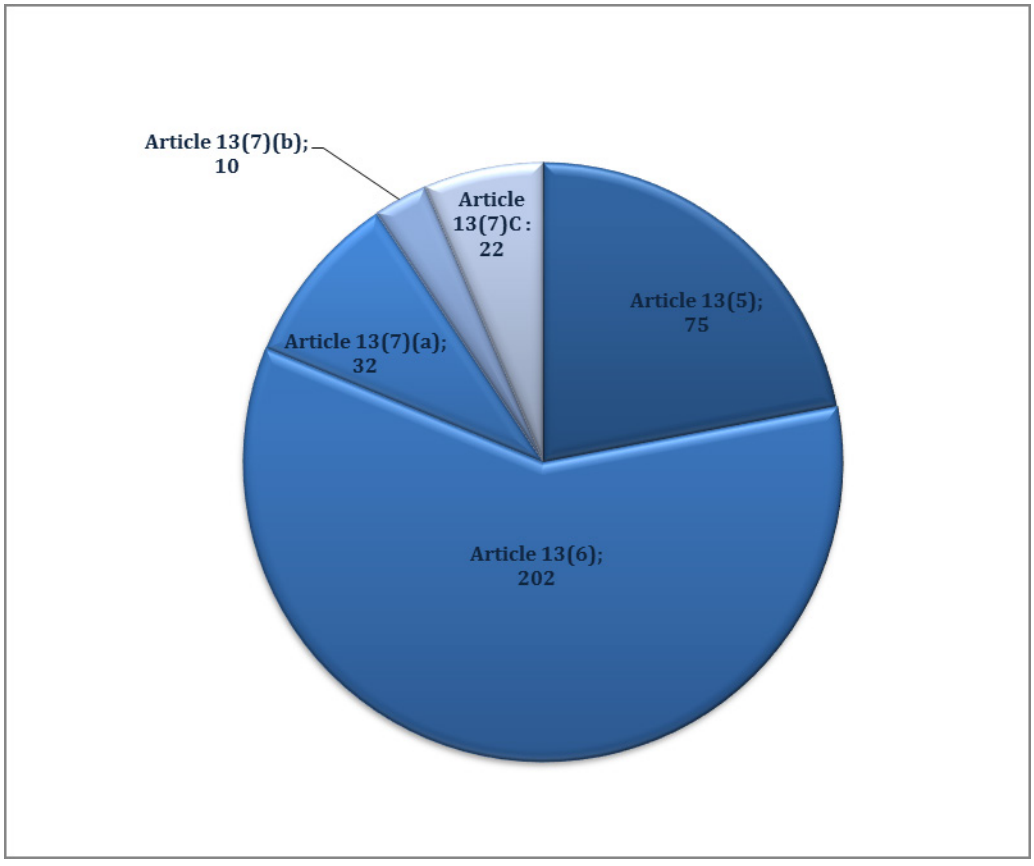
Article 13 notifications – per Member State

July 2011 – December 2013



Article 13 notifications – Legal Categories

July 2011 – December 2013



One of the unique features of the current Eurojust Decision, retained in the Proposal, is that Member States shall inform Eurojust of the setting up of JITs as well as of the results of the work of such teams.

On a final note, Eurojust believes that there is perhaps an incorrect reference at the end of paragraph 1, where it reads: "[…] This shall at least include the information referred to in paragraphs ***5, 6 and 7***" Eurojust understand that this should actually refer to "paragraphs 4, **5, and 6"**.

16) As to the feedback provided by Eurojust, can you please describe how it works? Please provide figures and examples.

Article 22 on the information provided by Eurojust to competent national authorities replaces Article 13a of the Eurojust Decision. The only addition to this provision is the last sentence in paragraph 1 of Article 22 which states that the information on the results of the processing of information, including the existence of links with cases already stored in the CMS, may include personal data.

The full potential of the CMS has not been exploited to date. No links with cases already stored in the CMS have been identified. National Desks individually notify their authorities of cases where a link is found. Eurojust is currently discussing its policy in relation to the CMS, including the development of a template for informing national competent authorities of the existence or non-existence of such cases.

This has not prevented the National Desks from providing feedback to national competent authorities. The feedback that may be provided to national authorities can come in a number of different forms. One is the simple result of the cross-check of data through the CMS (the existence or non-existence of links with other cases). Another can be the transmission of the data to Europol with the consent of the national authority, asking for a cross-check in their database and, then, informing the national authority of the outcome. The third, and most common form, consists of providing national authorities with information and advice on how to proceed: *e.g.*, suggesting rogatory letters, different systems of coordination, providing legal and practical information about the execution of rogatory letters or EAWs. This third form is more feedback than "information" as foreseen in Article 22 of the Proposal. Often, an Article 13 notification is followed by a specific request by a Member State authority, which triggers the opening of an operational file at Eurojust. Subsequently, all activity undertaking, including the provisions of information and feedback takes place in the framework of the opened case. Another practice consists of, upon receipt of an Article 13 notification and irrespective of whether there is a specific request to Eurojust for assistance, contacting the national authorities concerned and offering other services. This initiative of the National Desks to contact back national authorities opens the door for Eurojust to receive more cases.

Below are practical examples of such feedback.

Example A

A public prosecutor in Germany submitted data to Eurojust regarding a drug trafficking investigation according to Article 13(7)(b) of the Eurojust Decision. In doing so the public prosecutor used the electronic form developed by Eurojust for this purpose and indicated that it had not yet been decided whether support by Eurojust would be requested. Following this first input, the German National Desk at Eurojust and the submitting public prosecutor entered into a dialogue, which proved that the case contained potential conflicts of jurisdiction. In order to find a common solution it seemed essential to address these issues at an early stage through direct contacts between the German judicial authorities and those of one other Member State and third State involved. For

this purpose the German National Desk at Eurojust organised a coordination meeting involving all of the relevant national authorities at short notice. At this coordination meeting the participants agreed on a clear distribution of tasks in the areas where the national cases overlapped. Further, they agreed the order in which to prosecute common suspects in the respective national proceedings. The implementation of the agreement is currently being followed up and supported by Eurojust.

Example B

The Spanish National Desk at Eurojust received a notification under Article 13 of the Eurojust Decision from a judicial authority in Spain with regard to an investigation into counterfeiting of products involving several Member States and third countries. The Spanish National Desk set up the first contact by telephone and email with the judge in charge of the case in Spain and asked for the MLA requests addressed to the requested parties. Once they were received (together with their translations into the languages of the requested Member States), they were inserted into the CMS and shared with the National Desks of the requested Member States.

A constant exchange of emails and phone calls took place between the Spanish national authorities and the National Member for Spain, providing the feedback received from the requested parties as well as asking the judge to provide additional information (police report or summary case with the state of play). The national authorities were also informed about the exchange of information during a level II coordination meeting held at Eurojust among the National Desks concerned in this case. In addition, they were informed as well of the possibility to cooperate (*e.g*. holding a coordination meeting, setting up a JIT). In this particular case, the holding of a coordination meeting at Eurojust and the drafting of a joint investigation team agreement to be signed during the coordination meeting were suggested to the judge.

Therefore, in this particular case, all exchanges of information took place following the receipt of the notification under Article 13 of the Eurojust Decision. It will result in a further coordination meeting being held at Eurojust next month and eventually the signature of a JIT agreement.

As the term "*feedback*" has been abandoned in Article 22 of the Proposal, it is respectfully suggested that this should be reintroduced in order to reflect Eurojust's current practice.

I) Joint Investigations Teams

17) Are you satisfied with the provisions related to the support offered by Eurojust to JITs and the role of National members in JITs?

18) What is your opinion related to JIT funding?

19) What is your opinion on the competence of Europol – proposed by the Draft-Regulation for Europol – concerning Joint Investigation Teams?

As to the Eurojust's central role in JITs today, statistics and case examples, see Annex 1.

Eurojust welcomes Article 4(1)(e) which allows it to "*provide operational, technical and financial support to Member States' cross-border operations and investigations, including joint investigation teams"* as one of the most significant novelties introduced by the Proposal in the area of JITs. This provision distinguishes the important functions of Eurojust in supporting JITs. Furthermore, it enables the allocation of funds from the Eurojust annual budget thereby creating consistency and certainty in JIT funding.

The clarification of the possibility to provide financing to JITs set up under any legal instruments (not only under the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 MLA Convention) or the Framework Decision 2002/465/JHA), is a positive step forward which will further extend the support afforded to Member States.

However, it should be noted that Article 4(1)(h) of the Proposal for a Regulation on Europol, provides for a similar task for Europol: "*to provide technical and financial support to Member States' cross-border operations and investigations, including* joint investigative teams" (emphasis added). It is in the general interest of the competent authorities of Member States to receive support for their investigations from all EU agencies dealing with law-enforcement and judicial cooperation. However, the possibility proposed by the Commission for funding for JITs to be provided by both Europol and Eurojust raises concerns.

A scenario in which both Eurojust and Europol provide JIT funding would pose a high risk of overlapping and could generate confusion among national authorities. For instance, the same JIT could receive funding from both Eurojust and Europol without the other body being aware of it, national authorities would be confused about which organisation to approach for funding, and the same JIT could be granted funding by one organisation and not by the other, thus generating counter-productive competition between Eurojust and Europol.

It is important to underline that JITs are essentially instruments of judicial cooperation, aimed at facilitating mutual legal assistance between the Member States, and are often led by judges or prosecutors.

Eurojust's leading role in the area of JITs, and in particular in the JITs funding, is highly appreciated not only by practitioners but also by the EU institutions. For instance, the Council conclusions on the Eurojust Annual Report 2012 encourage Member States to *"make use of JITs operational capacities as well as of the assistance of Eurojust, including its coordinating and facilitating role"*. The need for Eurojust to continue with and further actively promote the financial and logistical support that can be afforded to JITs was also reiterated by national authorities during the Sixth Round of Mutual Evaluations. [1,2]

In summary, Eurojust:

- has successfully provided JIT funding in the past six years;
- is continuing to streamline its internal procedures to grant funding even more quickly;
- possesses the necessary expertise on the setting up and use of JITs and the know-how to evaluate the planned activities and actions within a JIT in the framework of criminal proceedings;
- hosts the JITs Network Secretariat.

If the option of having a similar provision in both the Regulations on Eurojust and Europol were to be pursued by the legislator, it would be crucial to ensure that a harmonised approach to JIT funding is developed by providing for a single coordination mechanism in both Regulations.

[1] Sixth Round evaluation reports on Austria (11351/2/13), Estonia (17899/2/12), Lithuania (15372/2/12) and The Netherlands (SN 2575/13).

[2] Additionally, recommendations were made to the EU to ensure the continuation of JIT funding through Eurojust while reducing the formalities and granting more flexibility – see Sixth Round Evaluation reports on Denmark (7249/2/13), Finland (7989/2/13) and Poland (13682/2/13).

J) Relations with other bodies and External relations

20) Do you have any suggestions as to the relevant provisions in the Proposal?

Relations with third countries and international organisations

The conclusion of cooperation agreements between Eurojust and third States in accordance with Eurojust's current legal framework has proved essential in that it has enabled Eurojust to exchange information, including personal data, with those States, namely. Norway, Iceland, United States of America (USA), Switzerland, the former Yugoslav Republic of Macedonia (fYROM) and Liechtenstein. The negotiation of cooperation agreements were recently concluded with Moldova and are ongoing with the Russian Federation and Ukraine. Norway and the USA have seconded Liaison Prosecutors to Eurojust. Contacts aimed at possibly starting negotiations of cooperation agreements are ongoing with Israel, Serbia, Montenegro, Bosnia and Herzegovina, Albania and Turkey. In addition, Eurojust has concluded Memoranda of Understanding with IberRed, UNDOC and Interpol.

a) Transfer of personal data to third countries and international organisations (Article 45)

Eurojust's national members receive requests from the competent authorities of Member States to assist in cases involving third States with which Eurojust has not concluded a cooperation agreement on a regular basis. Letters of Request, which are the usual basis for cooperation, always contain personal data and, as a consequence, national members are not generally allowed to forward copies of Letters of Requests to most third States. *A fortiori,* the latter also applies in cases where Eurojust organises coordination meetings, which by definition require the exchange of information including personal data, and where third States with which there is no cooperation agreement in place are invited to participate.

With a view to facilitating the operational work of Eurojust and without prejudice to any other possibility, it is suggested that, further to the possibilities already foreseen in Article 45 of the Proposal, the College of Eurojust is entitled to authorise sets of transfers of personal data to third States provided that appropriate data protection safeguards have been agreed between Eurojust, the third State in question and the body in charge of Eurojust's data protection supervision. This possibility would extend the scope of Article 45(3) of the Proposal and would mirror the system presently regulated by Directive 95/46/EC.

Furthermore, Eurojust considers in general that the proposed legal regime which would apply to the transfer of personal data to third States and international organisations is complex and requires simplification in order to provide clarity for practitioners.

b) Transfer of non-personal data to third countries and international organisations (Article 38(2))

Eurojust may directly exchange non-personal data with third States and international organisations in accordance with Article 38(2) of the Proposal. The effect of this article could be usefully enhanced by providing the possibility for Eurojust to conclude working arrangements in order to regulate the modalities of information exchange.

c) Requests for judicial cooperation to and from third countries (Articles 3(3) and 47)

The legal basis for Eurojust to assist investigations and prosecutions affecting one Member State and a third country is preserved in Article 3(3) of the Proposal. In accordance with that provision, Eurojust can assist investigations and prosecutions where a cooperation agreement under the Eurojust Decision or a working arrangement pursuant to Article 43 of the Proposal has been concluded with the third state, or where there is an essential interest in providing such assistance. In addition, Article 47 of the Proposal regulates the role of Eurojust in coordinating the execution of requests for judicial cooperation to and from third countries.

In view of the complexity of the proposed legal regime, Eurojust requests that clarification as per the material scope of Articles 3(3) and 47 is provided.

d) Secondment of liaison magistrates from third countries to Eurojust

The instrument of liaison magistrates seconded to Eurojust is considered to be a very useful tool. However, the Proposal does not include an explicit reference to the possibility for third countries to second liaison magistrates to Eurojust (as currently provided for in Article 26a(2) of the Eurojust Decision). Eurojust therefore suggests that Article 43(1) of the Proposal is amended as follows: *"Eurojust may establish working arrangements with entities referred to in Article 38(1) which may include the secondment of liaison magistrates to Eurojust"*.

At present, liaison magistrates from Norway and the USA are seconded to Eurojust. Romania and Croatia, prior to their accession to the EU, also seconded a liaison magistrate to Eurojust. Between 2007 and 2013, the liaison magistrates from Croatia, Norway and the USA registered 313 cases. In addition, they organised 12 coordination meetings in complex cases.

e) Eurojust liaison magistrates posted to third countries (Article 46)

Article 46 maintains the possibility of posting Eurojust Liaison Magistrates to third countries (Article 46). It is suggested that the mandate, status and competences of such Liaison Magistrates should be further defined.

Relations with other bodies

a) Common provisions (Article 38)

In view of the importance of information exchange between Eurojust and other Union agencies and bodies, Eurojust welcomes the introduction of an explicit legal basis entitling it to directly exchange, information, including personal data, even in the absence of any specific working arrangement(Articles 38(2) and 44 of the Proposal).

That being said, working arrangements between Eurojust and Union agencies and bodies are still needed *inter alia* to regulate the modalities of the information exchange, including personal data, and the secondment of liaison officers. In this regard, Eurojust would like to express its concern that Article 38 of the Proposal no longer explicitly mentions the possibility for Eurojust to conclude working arrangements with Union bodies and agencies. From a legal point of view, it is unclear whether this omission affects Eurojust's current ability to conclude such working arrangements. Article 43 of the Proposal states that *"Eurojust may establish working arrangements with the entities referred to in Article 38 (1)"* and this provision includes Union bodies and agencies.

However, Article 43 of the Proposal is part of the section on international cooperation and it only refers to relations with the authorities of third countries and international organisations.

For these reasons it would be advisable to amend Article 38 of the Proposal to state ***explicitly*** that Eurojust may conclude ***working arrangements with Union agencies and bodies***.

In addition, the inclusion of an explicit provision in the text of the Eurojust Regulation which allows both the secondment and hosting of liaison officers should be considered as it would contribute to the development of greater synergies between Eurojust and its partners. The secondment of liaison officers to Eurojust is currently possible under Article 26(2) of the Eurojust Decision.

b) Relations with OLAF (Article 42)

Experience has shown that cooperation between Eurojust and OLAF can be difficult in practice. In order to optimise this cooperation, it is in Eurojust's view essential that Article 42 provide the possibility for both organisations to initiate a contribution to the other party's work. Moreover, cooperation between both entities could also be reinforced by converting OLAF's current possibility ("*may*") to contribute to Eurojust's work into a duty ("*shall*") by analogy with the wording in Article 13 of the OLAF Regulation No 883/2013. This would not only increase the efficiency of the cooperation between the entities, but it would also ensure consistency between the OLAF Regulation and the future Eurojust Regulation.

In light of the foregoing, Eurojust suggests that **Article 42(2) of the Proposal** reads as follows:

*"OLAF **shall** contribute to Eurojust's coordination work regarding the protection of the financial interests of the Union, in accordance with its mandate under Regulation (EU, Euratom) of the European Parliament and of the Council No .../2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 **either on the initiative of Eurojust or at the request of OLAF**."*

21) Do you consider that the provisions on EJN and Europol are sufficient?

Relations with EJN (Article 39)

The wording of Article 39(1) of the Eurojust Proposal does not introduce any changes compared to Article 25a of the Eurojust Decision and therefore it does not provide for a basis to improve cooperation between Eurojust and the EJN. In addition, Article 20 of the Eurojust Proposal regarding the ENCS is identical in substance[1] to Article 12 of the Eurojust Decision.

Eurojust wishes to emphasise the need to reflect further and to propose some ideas which may support the future development of Eurojust's relationship with the EJN, possibly by adding a new provision related to the ENCS into Article 20 of the Eurojust Proposal.

Article 12(5)(b) of the Eurojust Decision (reproduced identically in Article 20(5)(b) of the Proposal for a Eurojust Regulation) provides an advisory role for the ENCS in determining whether a case should be dealt with by Eurojust or the EJN: "*[…] The ENCS shall facilitate, within the Member State, the carrying out of the tasks of Eurojust, in particular by […] assisting in determining whether a case should be dealt with the assistance of Eurojust or of the European Judicial Network*".

[1] There is a simplification in the wording of paragraph 7 which does not affect its content.

It is considered however that this provision cannot by itself guarantee that the ENCS becomes an effective interface between the national authorities and the EJN and Eurojust. A greater involvement of Eurojust's national members in the ENCS established in their Member State would bring an added value here, in view of their expertise and role.

It is therefore suggested to amend Article 20 of the Eurojust Proposal to indicate that the Eurojust national member shall be invited to all meetings of the ENCS and be closely associated to its work.. This provision would allow for more effective dialogue and assistance in determining whether a request (or some types of requests) should be dealt with the assistance of Eurojust or the EJN. This would involve the timely assessment of requests and a consideration of which entity is best placed to provide assistance. Furthermore, it is suggested that the term "request" be used in the text instead of "case" as this is inappropriate when referring to the assistance that can be provided by the EJN and Eurojust.

Relations with Europol (Article 40)

A swift exchange of information would certainly improve the capacity of both Eurojust and Europol to support Member States in the fight against serious crimes. Hence, Eurojust welcomes Article 40 of the Proposal which, coupled with Article 27 of the Proposal for a Regulation on Europol, provides for a mutual and easier access to information for both organisations. These articles take on board the joint Eurojust-Europol position on mutual exchange of information communicated to the Commission in February 2013 endorsing the necessity to apply the principle of reciprocity to both organisations. In this connection, Eurojust would like to suggest that discrepancies in the text of these Articles should be avoided in so far as possible.

Hence, Article 40, paragraphs 2, 4 and 5 should read as follows:

> "*[…]2. Searches of information in accordance with paragraph 1 shall be made only for the purpose of identifying whether information available at* ***~~Eurojust~~*** ***Europol*** *matches with information processed at* ***~~Europol~~ Eurojust****.*
>
> *[…]4. If during Eurojust's information processing activities in respect of an individual investigation, Eurojust or a Member State identifies the necessity for coordination, cooperation or support in accordance with the mandate of Europol, Eurojust shall notify them thereof and shall initiate the procedure for sharing the information, in accordance with the decision of the Member State providing the information. In such a case* ***Europol ~~Eurojust~~*** *shall consult with* ***~~Europol~~ Eurojust.***
>
> *5. Europol shall respect any restriction to access or use, in general or specific terms, indicated by Member States, Union bodies or agencies, third countries****, and*** *international organisations* ***or Interpol in accordance with Article 38****."*

In addition, Article 27(6) of the Proposal for a Europol Regulation should read as follows:

> "*6. Eurojust****, ~~including the College, the National Members, Deputies, Assistants, as well as Eurojust staff members,~~*** *and OLAF, shall respect any restriction to access or use, in general or specific terms, indicated by Member States, Union bodies* ***or agencies,*** *third countries and international organisations in accordance with Article 25(2)."*

In addition, the inclusion of a provision in the text of the Eurojust Regulation providing the possibility to second and host liaison officers to and from Europol would contribute to the development of greater synergies between the two organisations. The secondment of liaison officers is currently possible under the Eurojust Decision (Article 26(2) provides for the secondment of liaison officers to Eurojust) and is envisaged by the 2010 Agreement between Eurojust and Europol (Article 5 provides for the secondment and hosting of representatives of both Eurojust and Europol at the other Party's premises).[1] The draft Agreement between Eurojust and Europol on the temporary placement of a Eurojust representative to the European Cybercrime Centre (EC3) at Europol is a concrete example of the implementation of this Agreement.

K) Data protection

22) Which concrete obstacles do you see in the application of Reg. 45/2001 to Eurojust?

23) What is your opinion on the current data protection regime? Do problems in daily practice (e.g. concerning the revision of time limits of the storage of data or the limited categories for the processing of personal data) occur?

Eurojust wishes to stress the need to have a workable and tailor-made data protection regime included exclusively in the Eurojust Regulation and taking full account of the judicial nature of the work carried out by Eurojust. Such regime would serve best the needs of Eurojust and the national judicial authorites with whom it works and would also offer more clarity and certainty to data subjects by regulating all DP elements in one legal text.

Eurojust therefore notes with concern the recent developments at the European Parliament where, following the vote on 12 March 2014 on the DP reform package, both the proposed DP Regulation and Directive would be applicable to the European institutions, bodies and agencies. Such instruments were not initially designed for that purpose and take no account of the specific nature of the work carried out by Eurojust. As clearly stated in declaration 21 to the Treaty of the Functioning of the European Union, *specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields*.

In the same line, Eurojust is concerned by the fact that the draft Eurojust Regulation foresees the full application of the Regulation 45/2001 to operational matters, which is not appropriate. The application of Regulation 45/2001 should be limited to the administrative processing operations, at the same time regulating the case-related processing fully in the text of the new Regulation.

The proposed application of Regulation 45/2001 to all processing operations at Eurojust means that Regulation 45/2001, a rather outdated instrument, designed for the first pillar and adopted for regulating the processing of personal data, mostly staff data, will be applicable to a judicial body, exclusively working within the area of police and criminal justice cooperation. Knowing the specificity of the work in this area the ex-first pillar instrument is not suitable. The proposed Europol Regulation[2] foresees that Data Protection Rules at Europol should be strengthened and drawn on the principles underpinning Regulation (EC) No 45/2001.

[1] Moreover, it should be recalled that the 2010 Agreement between Eurojust and Europol has been approved by the Council in accordance with Article 26(2) of the Eurojust Decision.

[2] Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA, COM(2013) 173 final http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2013/com_2013_0173_en.pdf

Certain provisions of Regulation (EC) No 45/2001 are not suitable for this area (for example, the use of consent as a legal ground for processing for police and justice processing operations; the data subject's right to object, etc.). Also, the provisions of the Regulation 45/2001 regarding supervision would be fully applicable to Eurojust including procedures such as the prior checking by the European Data Protection Supervisor which are clearly unsuitable for the law enforcement area and would hamper the proper functioning of Eurojust.

The proposed Eurojust Regulation should be aligned with the new Europol Regulation on the limitation of the application of Regulation 45/2001 to the administrative processing operations. The case-related processing operations should be regulated fully in the text of the new Regulation and the Eurojust Data Protection Rules.

Moreover, the proposed Eurojust Regulation does not contain a reference to the Data Protection Rules anymore. The proposed Regulation does not regulate all data processing aspects at the same level of detail than the present DP Rules. The existing DP Rules should be maintained provided that any necessary revisions in the light of the new legal framework and gained experience take place.

Eurojust welcomes the fact that the proposed Eurojust Regulation contains DP provisions which are in line with the existing regime and take on board the core of it. However, Eurojust would like to see some adjustments in its current data protection regime based on its experience when applying Articles 15, 16.6, 21.2, 21.3(a), 21.4, 21.5 of the Eurojust Council Decision. Most of these adjustments are also supported by the JSB. Eurojust will provide Copen with more concrete answers on data protection matters once there is more clarity on the overall data protection regime applicable to Eurojust and its impact in concrete articles.

24) Which concrete problems or solutions do you envisage in entrusting the data protection supervision to the European Data Protection Supervisor?

Although the wish of the Commission to introduce a supervision scheme in line with the regime of the other EU institutions, agencies and bodies is understandable, it should be underlined that such scheme takes no account of the judicial nature of the work carried out by Eurojust and of the fact that the data processed by Eurojust come from the MS and go back to them afterwards.

Eurojust has a robust data protection system in place, tailor made to the mandate and tasks of Eurojust, closely and effectively monitored by the DPO and JSB. The Lisbon Treaty refers to the independent data protection authorities (plural); there is therefore, legally speaking, not a strict need to have all agencies and institutions supervised by the same supervisory authority, as it has also been underlined by the opinion of the Legal Service of the Council of the European Union.

Furthermore and as it was already stated, the Regulation (EC) No 45/2001 is not workable and was not meant for the processing of information in the law enforcement and judicial cooperation area.

The supervision of Eurojust activities requires a judicial component, which is presently safeguarded by the composition of the JSB Eurojust, with a big judicial emphasis and proper involvement from the Member States. The members of the JSB are either judges or members of an equal level of independence with its secretariat and financial resources to guarantee the independence of their work.

The effective and consistent supervision requires that the national DPAs are involved in supervision and this is already ensured by the JSB appointees. At the EU level, the European Data Protection Supervisor is not competent to supervise the European Court of Justice when acting in its judicial capacity, as it is clearly stipulated in Article 46c of Regulation (EC) No 45/2001, defining the duties of the EDPS. Moreover, the EDPS does not have a power and competence to impose instructions at the national level. It is only up to the national DPAs to enforce the data protection requirements on the actors playing at the level of Member States. Precisely due to the lack of enforcement at the national level and lack of the competence to supervise the activities in the judicial area, the model of coordinated supervision as it stands in Article 35 of the Eurojust Regulation is not the best option for Eurojust.

Furthermore, the application of Article 27 of Regulation 45/2001 regarding prior checking by the EDPS, which subjects to this procedure processing operations relating to suspected offences, criminal convictions and security measures, raises very serious concerns. Such procedure, if applied to case-related data processing operations, would de facto jeopardise the functioning of Eurojust and make it impossible to carry out its tasks properly.

Also, regarding the powers of the EDPS regulated in Article 47 of Regulation 45/2001, it seems difficult to justify how this supervisor could order for instance the erasure or destruction of data or impose a temporary or definitive ban on processing regarding data which have been provided by the judicial authorities of one or more Member States and are processed by Eurojust in the context of a judicial investigation which will normally lead to a court proceeding in one or more Member States. It should not be forgotten in this context that the College of Eurojust is composed of intergovernmental representatives of the judicial authorities of the Member States and this should be reflected as well in the supervision scheme applicable to Eurojust.

L) EPPO

25) Are you satisfied with the provisions related to Eurojust's support to the EPPO? Do you have any concrete proposals to make?

Eurojust acknowledges the "special relationship" envisaged both in the Eurojust and the EPPO Proposals and the fact that the Commission presented them as a package. Consequently, Eurojust believes that the provisions regulating the relationship between the EPPO and Eurojust in the Eurojust Proposal have to be read in combination with the corresponding ones in the EPPO Proposal. These provisions – although similar in many aspects – differ in others. Such discrepancies should be avoided.

The important involvement and responsibility of Eurojust in the functioning of the EPPO will raise questions related to the capacity and resources that are needed to provide support to the EPPO. Both proposals foresee that the details of the arrangements related to this support will be subject to an Agreement (Article 57(6) of the EPPO Proposal and Article 41(7) of the Eurojust Proposal). That Agreement should provide for proportionate support, taking into account the costs of the services to be provided and the needs of both organisations so that Eurojust's core business is not adversely affected. In this regard, the statement in the explanatory memorandum of the Eurojust Proposal that the support provided by Eurojust should be on *"a zero cost basis"* whilst Eurojust's caseload is increasing and its staff numbers are falling is unrealistic and jeopardises Eurojust's ability to meaningfully contribute to the fight against serious cross-border crimes. That being said, it may be possible to operate shared services in the areas of e.g. staff administration, IT, accounting and security if this support to the EPPO is accepted as a "new task" for Eurojust and if Eurojust is provided with the additional resources necessary.

From a more general point of view, in light of the on-going negotiations on the EPPO Proposal, it is very difficult to have an idea as to what the EPPO – if adopted – will look like and as to how it will function. Therefore, Eurojust would like to reserve the right to provide an opinion on the provisions in the Eurojust Regulation that are related to the EPPO until these issues have been clarified.

M) <u>Other provisions</u>

26) Are there any observations and suggestions you would like to submit as to the other provisions in the Proposal?

a) Case Management System (CMS) (Article 24)

The architecture of the Eurojust CMS remains identical (Article 24 of the Proposal). The definition of the CMS in the Proposal as temporary work files and index is still limiting and would, as currently drafted, not allow for a global system (including, for instance, an analytical work tool).

Rather than being merely composed of temporary work files and of an index, the definition of the CMS could be reviewed in order to ensure that the CMS is rather understood as a comprehensive system for data processing, not as a single database. The system could be composed of several connected tools that would include the pure registration of cases, but that could also support basic analysis by finding links between cases and entities, and include an advanced search tool and an easy tool dedicated to statistics.

With regard in particular to paragraph 6 of Article 24 which states that "For the processing of operational personal data, Eurojust may not establish any automated data file other than the Case Management System or a temporary work file", Eurojust considers that the wording "or a temporary work file" may lead to some degree of misunderstanding as temporary work files are part of the CMS and not a separate storage unit as may be implied by the current wording of the Proposal. Eurojust suggests that this could helpfully be clarified.

b) Evaluation mechanisms (Article 55)

Regarding the involvement of the European Parliament and the national Parliaments in the evaluation of its activities as provided for by Article 85 TFEU, it is appreciated that the *sui generis* nature of Eurojust's mandate has been taken into account by proposing that the Parliaments' involvement will not interfere with its actions and decisions related to specific operational cases (*see* Article 55(2)).

The Commission's Proposal explicitly foresees that the European Parliament may present observations and conclusions on Eurojust's Annual Report (Article 55(1)). In the event that, during the negotiations, a similar possibility is extended to the Council (as it is currently the case), it is suggested to streamline the provisions on evaluation and to provide a mechanism for coordinating the various evaluation exercises and their results in order to prevent possible overlapping and contradictory feedback[1].

[1] In line with the Eurojust contribution on "Involvement of the European Parliament and national Parliaments in the evaluation of Eurojust's activities according to Article 85 TFEU", sent to the Commission in July 2012.

c) Eurojust's opinion on relevant draft instruments

On the basis of the positive experience of the implementation of Article 32(3) of the current Eurojust Council Decision, it is strongly suggested to maintain the possibility for the Commission and the Council to seek Eurojust's opinion on all draft instruments prepared in its field of action, and to extend the same possibility to the European Parliament.

d) Transparency (Article 60)

Eurojust is of the opinion that the protection of the operational information received by or exchanged via Eurojust is an essential condition of the trust placed in the organisation by national authorities and therefore a guarantee of efficient judicial cooperation. Eurojust welcomes the alignment of the **transparency** regime to that provided for the Court of Justice of the European Union, by which Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents solely applies to Eurojust's administrative tasks.

This approach is in line with the suggestion made by Eurojust on 19 March 2013[1] and will remove the current anomalies which, *e.g,* force parties to the proceedings or even national judges and prosecutors to undergo the standard access to documents procedure to request documents regarding judicial proceedings. Under the current regime all Eurojust documents fall within the principles and limits of Regulation 1049/2001. Due to the universality principle governing Regulation 1049/2001, any disclosed document to parties to the proceedings for example would automatically become public, which creates a great deal of unease among the national judges and prosecutors conducting judicial investigations and thus hinders judicial cooperation within the EU.

e) Confidentiality (Article 59)

With the same aim of protecting the judicial investigations and enhancing trust among the national competent authorities, Eurojust sees the interest of reinforcing the **confidentiality** provision (Article 59 of the Proposal) by broadening the scope to not only information received but also "*exchanged via Eurojust*" and in view of an harmonized approach to obligation of confidentiality.

The success of Eurojust as a judicial co-operation and co-ordination unit depends to a large extent on the trust of the Member States that data which are exchanged via Eurojust are treated confidentially. The short-coming of the current drafting of Article 59 of the Proposal is that it remains vague and does not make the distinction between confidentiality and disclosure.

Concepts of confidentiality vary from Member State to Member State. While everybody will agree to treat information confidentially, in practice different rules and restrictions may apply with regard to the disclosure of that information during judicial proceedings in the Member States and especially with regard to the investigative ("pre-trial") phase, depending on the different national legal frameworks that apply.

> In general, judicial authorities in the Member States are not entitled to disclose information which has become known to them through the performance of their duties if this may prejudice an investigation, court hearing or the proper administration of justice. In several national systems, specific reference is made to the duty to protect the conduct of investigations, surveillance activities and judicial proceedings as well as classified information. This is the case in Bulgaria, Czech Republic, Estonia, Spain, France, Croatia, Malta, Portugal, Romania, Slovenia, Slovakia and Sweden.

1 Annex III, Contribution of Eurojust In View of a Regulation under Article 85 of the Treaty on the Functioning of the European Union: Confidentiality and access to documents.

Some Member States have adopted rules on the proper handling of classified information. This is the case for the Czech Republic, Lithuania, Hungary and Poland.

Most national rules explicitly provide that unauthorised disclosure of such information is punishable as a criminal offence and may result in imprisonment (e.g. Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Spain, France, Italy, Latvia, Lithuania, Austria, Poland, Slovakia, Finland and Sweden).

This leads to uncertainty whether the requirements for confidentiality of information of the providing authority of a Member State will be respected by the receiving authority of another Member State. This can result in reluctance to share information and can hinder the effectiveness e.g. of coordination meetings.

Most precisely, in general terms criminal proceedings in the Member States behold the obligation by the official prosecution services to disclose the evidence to be presented before the trial court to support the accusation against the defendant. However, this obligation would solely apply to the gathered evidence, not to the preliminary investigations and particularly to the eventual investigation strategies, which are the core activity of Eurojust.

A most serious inconvenience can occur with data regarding co-ordination of investigative activities referred to serious organised transnational crime. It is not uncommon that in these cases, a part of the investigation could be concluded so that the prosecution could be able to present the counts against some defendants before a national criminal court in a Member State (or must present the accusation, e.g. to avoid preclusion or the limits in pre-trial custody), whilst other parts of the co-ordinated investigation referred to activities or persons not included in this formalised accusation continues in other Member States. In this type of situations, disclosure of all the information exchanged or received via Eurojust could seriously undermine the continuity of the pending investigation and even seriously endanger public officials or persons taking part in it.

Eurojust therefore proposes that the future Regulation on Eurojust provides the legal basis for the adoption of rules regarding the handling and confidentiality of information received or exchanged via Eurojust. These rules shall not replace the national rules, but shall apply in conjunction with legal obligations regarding the confidentiality of judicial files applicable at national level. The objective is to guarantee national authorities that there will be no leak of information, since they will be able to control the use that will be made of the information they exchange with Eurojust or via Eurojust with other national authorities.

f) Security rules on the protection of classified information (Article 62)

Regarding the security rules on the protection of classified information, Article 62 of the Proposal foresees the application of the security principles of the Commission security rules for the protection EU Classified Information (EUCI) and sensitive non-classified information. This is a significant change from the current Eurojust Decision which foresees in Article 39a the application of the security principles of the Council Security Rules only for the management of classified information. Thus, the scope of this provision is substantially broadened as sensitive non-classified information covers potentially any case-related data but also other operational and strategic documents as well as personal data. However, no definition for the term "*sensitive non classified information*" is given. Equally, the "*security principles*" of the Commission security rules which should be applied are not exhaustively defined in the Commission security rules. Therefore, the wording of this provision leaves uncertainty as to its full and correct implementation.

For the operational reasons explained above, Eurojust agrees that the adequate protection of sensitive – but not-classified - information needs to be ensured. The Commission security rules cover classified information and therefore provide adequate protection measures for this category of information, including specific security measures depending on the level of classification. However, it seems difficult to apply the security principles of protection measures specifically designed for classified information to a different category of information. Eurojust therefore suggests separating the two categories of information – EUCI and sensitive non-classified information – and applying the security principles of the Commission security rules exclusively to EUCI in line with their scope and purpose. A separate set of rules should be implemented to cover all other sensitive information created and processed at Eurojust, designed specifically to fit this specific purpose.

In order to achieve the aim of the suggested provision – the protection of sensitive non-classified information – but limit possible confusion and uncertainty of its implementation, Eurojust suggests amending Article 62 of the Proposal as follows:

> "***1.*** *Eurojust shall apply the security principles contained in the Commission's security rules for protecting European Union Classified Information (EUCI)* ***~~and sensitive non-classified information~~****, as set out in the annex to Commission Decision 2001/844/EC, ECSC, Euratom. This shall cover, inter alia, provisions for the exchange, processing and storage of such information.*
>
> ***2. Eurojust shall adopt rules to ensure adequate protection of sensitive non-classified information, including the creation and procession of such information at or by Eurojust***."

g) Financial provisions (Articles 48, 49, 50, 51 and 52)

Eurojust welcomes the compliance of the financial provisions set out in Articles 48, 49, 50, 51 and 52 of the proposal with the Model Provisions for Agencies' Founding Acts in the framework of the Common Approach. Nevertheless, some minor clarifications in the text might improve legal certainty.

In Article 49(6) of the Proposal, it is suggested for clarification purposes that the words "*Eurojust's contribution*" (for which the budgetary authority shall authorise the appropriations) be replaced by the words "*contribution from the European Union to Eurojust*".

As to the provisions related to accounts and discharge, it is *suggested to align the wording of Article 51(7) of the Proposal with Article 99(3) of the Framework Financial Regulation No 1271/2013* and to replace the wording as follows:

> "***~~The Administrative Director~~*** ***The accounting officer*** shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the College's opinion".

Further, it is suggested for clarification purposes that for the date of publication of the final accounts in the Official Journal in Article 51(8) of the Proposal, the words "***by 15 November of the following year"*** be replaced by the words "***by 15 November of the year following the respective financial year***".

h) Staff provisions (Articles 53 and 54)

Although Eurojust welcomes that the Proposal allows for a wider range of staffing possibilities with the inclusion of the phrase "*other staff not employed by Eurojust*", for the sake of legal certainty, it is however suggested that the meaning of this phrase be clarified.

i) Language arrangements and use of the Translation Centre (Article 58)

The direct application of Regulation No. 1 as proposed would represent a significant change for Eurojust. Article 3 of Regulation No. 1 of 1958 determining the languages to be used by the EEC requires that documents sent to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of that State. Article 4 further provides that *"documents of general application shall be drafted in [all] the official languages"*.

Eurojust notes that these provisions will have a significant impact for Eurojust, both in budgetary terms as the number of translations increases and in the time required to perform certain administrative tasks.

Eurojust understands that a similar provision appears in the founding acts of some other new agencies as well as in the Model Provisions for Agencies' Founding Acts. However, the operational and budgetary implications of having to use the Translation Centre should be analysed and possible amendments to this provision should be considered for operational reasons.

As the mandatory use of the services of the Translation Centre may require significant additional budgetary means, Eurojust suggests redrafting Article 58(2) of the Proposal as follows to allow flexibility:

> *"**The Translation Centre of the Bodies of the European Union shall provide translation services to Eurojust, if so requested**"*.

Eurojust would like to observe that, as practice has shown, the translation **costs** by the Translation Centre of the European Union (CdT) would increase the Eurojust translation expenses by 125,8%. As an example, the costs of translation of the Eurojust Annual Report rose from 72.284 EUR in 2012 (market price) to 163.251 EUR in 2013 (CdT price). Regarding the translation of operational documents, a comparative analysis on the price of 1.923 pages drew the following figures: 69.113 EUR (market price) versus 186.531 EUR (CdT, estimation based on CdT price structure). In 2013, a number of 2.215,5 pages of documents other than the Annual Report were translated by Eurojust contractors (not CdT), at a total price of 79.647 EUR. If CdT had been requested to translate this amount of pages, the total amount would have been 214.903,5 EUR – representing a 169% increase in cost. Of this amount approximately 95% related to operational documents. Further, it seems that the CdT outsources translations to the market. This means that Eurojust effectively pays an administrative overhead for the outsourcing of translations to market providers that could previously have been accessed directly at a much lower cost. This outsourcing also potentially entails more delay than Eurojust would encounter if it contracted the services directly.

Moreover, and more importantly, on the delivery time and availability **for urgent translations**, the CdT cannot provide translations of 5-10 pages in less than 7 working days (1 and ½ week). They cannot provide services outside of working hours or on non-working days either. This lack of swift service may provide scope for an exception to the use of the CdT (and thus alow the use of market vendors for urgent translations), which would be justified by the nature of Eurojust's operational work.

Annex

1. Joint Investigation Teams (JITs): Eurojust's central role in JITs today

- Eurojust started to promote JITs by developing initiatives and projects aimed at assisting practitioners in the setting up and functioning of JITs a long time ago. For instance, Eurojust organised the first meeting of the JITs Network that took place in November 2005. In 2008, the legislator recognised the central role of Eurojust in supporting JITs and reinforced it by introducing several new provisions in the revised Eurojust Decision.

- Encouraged by the legislator's acknowledgment of its role in JITs, Eurojust has enhanced its efforts and has developed its expertise in the field. It has enlarged the variety of services offered to practitioners, such as the assistance in the drafting of JIT agreements and operational action plans, especially when specific clauses need to be added to the standard model agreements, advice to national authorities as to which specific tool is to be used in each specific case, assistance in identifying suitable cases for use of JITs, provision of legal and practical information on procedural issues (e.g. disclosure of information and admissibility of evidence), in supporting JITs through coordination meetings and in providing coordination during operational activities on action days.

- Moreover, the two JITs Funding Projects which have been running at Eurojust for over four years have been unanimously recognised as greatly facilitating the setting up and running of JITs.

  The first JIT Funding project was launched on 15 July 2009 and ended on 31 December 2010. A total of 34 applications from 13 different JITs were submitted within eleven time slots. Throughout this Project Eurojust supported 11 JITs involving 14 different Member States.

  From the start of the Second JIT Funding Project on 25 October 2010 until 12 May 2013, Eurojust received a total of 295 applications from 95 different JITs within 41 published time slots; 293 applications were fully or partially awarded the funding requested. Eurojust provided support to JITs involving 22 Member States.

  Taking into account the end date of the second JITs funding project (30 September 2013), Eurojust has secured additional funding from its own budget in order to avoid any disruption to the support provided to JITs until the end of 2013. In 2014, 650,000 Euros will be made available by Eurojust to fund JIT activities. In addition, a revision of the procedure is underway in order to improve and streamline the process in 2014.

- The JITs Network Secretariat hosted by Eurojust in accordance with Article 25 of the Eurojust Decision plays an active role in promoting the use of JITs. In addition to the organisation of the annual meetings of the JIT Network and the participation in many training and awareness-raising events, the Secretariat has designed a web-based platform accessible to national experts, which aims at facilitating contacts, interaction and the sharing of experience.

- Eurojust' initiatives in promoting JITs and the legislative action towards its enhanced involvement in the field, have led to a significant strengthening of Eurojust's role in JITs, both from a quantitative and qualitative view point.

From a quantitative perspective, the number of JITs in which Eurojust has formally participated through its national members has steadily increased from 20 in 2010 to 40 in 2013 (29 in 2011, 47 in 2012). In 2013, Eurojust was also involved in 61 additional JITs set up in previous years, which amounts to a total of 101 JITs in 2013.

From a qualitative perspective, the following case examples clearly illustrate the added value of Eurojust's role in supporting JITs from an operational, technical and financial point of view: in these, like in many other cases, the same successful result could have not been reached without the support provided by Eurojust.

1) In a Eurojust case concerning an organised crime network specialised in the theft of luxury cars, a JIT was established between Estonian, Latvian and Lithuanian authorities, with judicial coordination support and funding for the JIT under the JIT Funding Project provided by Eurojust. This case involved one of the largest and longest-running joint investigations in the Baltic region, from April 2009 to April 2012. This JIT, supported by Eurojust, provided valuable experience and solutions in terms of international cooperation, and the overcoming of the gaps between national legal systems which required a great deal of creativity. For instance, the participation of the Eurojust's national member for Lithuania in the JIT has proved to be vital: the national member played an essential advisory and monitoring role throughout the whole investigation. The leader of this JIT being a prosecutor, the national member, acting as national authority, could also ensure that the requests issued by Estonia were immediately executed by Lithuania.
   The JIT's final outcome consisted of 11 court decisions, 25 convictions, and the award of nearly 550, 000 Euros in compensation to victims.

2) France and the United Kingdom signed a JIT with regard to a murder case for which they received judicial coordination support from Eurojust and funding under the JIT Funding Project. On the basis of the first mid-term evaluation of this JIT, it appears that cooperation has been smooth and that counterparts from both Member States held regular weekly meetings at different levels. Eurojust's intervention in this JIT case was crucial for different reasons. First, with respect to the funding of the JIT, Eurojust's national member for France organised a coordination meeting for the JIT-members so that they could better understand the funding requirements and work more efficiently in order to obtain the requested funds. Second, with regard to technical legal issues on admissibility and disclosure of evidence, Eurojust was involved in helping to find ways of satisfying different legal requirements. For instance, the annexes to the JIT Agreement were used to clarify conditions on the exchange of information and confidentiality rules and to foresee arrangements related to the investigative powers of the seconded French and UK police officers.

3) In a heroin trafficking case, several drug trafficking distribution networks in Austria, Germany, Belgium and the Netherlands had been set up by an organised crime group from the Former Yugoslav Republic of Macedonia (FYROM). To step up the common efforts in fighting the organised crime group, the parties agreed that Eurojust should coordinate the investigations in the Member States and promote the initiation of investigations and prosecutions in the FYROM. Several coordination meetings were held and coordinated investigations resulted in the arrest and conviction of the main suspects and several other perpetrators. As the organised crime group subsequently rebuilt its network and several legal problems caused by differences in the legal systems of the involved countries, still posed an obstacle to disclosure of information and full involvement of the potential partners, new coordination meetings were held to see how cooperation could be fostered. After consultation and agreement at national level on the proposed measures to be adopted, a fourth coordination meeting at Eurojust resulted in the setting up of a JIT between Austria, Germany, the Netherlands and the FYROM. Eurojust's role in the setting up of the JIT was crucial: it liaised with FYROM to see whether a JIT could be established and organised a coordination meeting to discuss the possibilities for it, it prepared translations of the draft JIT Agreement and it led the negotiations on the draft agreement and, finally, it financially supported the JIT.

   At a certain point, the JIT came under threat due to a financial practical problem. According to the JIT, all documents had to be exchanged in their original language, but FYROM could not afford to translate the documents that it had received. As a consequence, Germany applied for funding to ensure the translation of the documents.

4) In a huge case of VAT carousel fraud, a JIT was set up between the Czech Republic, Hungary and Slovakia, with the support of the Eurojust JIT funding project. In this JIT, Eurojust's assistance was very helpful from different perspectives. Not only was Eurojust's expertise beneficial in identifying the modus operandi of the criminal activities involved during one of the coordination meetings, but it also helped to solve a legal problem related to the admissibility of evidence. In principle, evidence lawfully gathered within a JIT in one Member State that is party to the JIT should be admissible in other Member States that are parties to the same JIT. However, in light of the particularities of the Czech Law and the Slovakian Law regarding the taking of witness evidence, the question was raised as to whether the questioning of the witness should be done by using an additional MLA request outside the JIT. Finally it was decided with the help of Eurojust that - in order to pay due regard to the Framework Decision on JITs as implemented into Hungarian law - the Czech and Slovakian procedural requirements could be accepted without the need to issue additional MLA requests. By discussing this issue during a coordination meeting, the competent National Desks of Eurojust adequately addressed the legal problems that had been hampering the efficiency and effectiveness of the JIT. The establishment of the JIT resulted in the arrest of a number of different suspects in Hungary and in the seizure of high value proceeds of crime including luxury cars.

5) In 2011, one of the largest JIT's ever formed was set up to tackle a huge criminal network involved in football match fixing and related illegal betting on international and European football matches. Investigations were on-going in approximately ten Member States and third countries and related to hundreds of matches in thirty countries in Europe, Africa, Asia, South America and Central America. The cross-border nature of the crimes (more than thirty countries) as well as the highly structured nature of the criminal organisation, required concerted international judicial cooperation and coordination, including the following actions by Eurojust: 1) competent authorities in the concerned countries were identified to facilitate the opening of investigations; 2) the German and Hungarian Desks held four coordination meetings, inviting non-JIT members UK, Italy and Croatia; 3) video links were set up with Asian counterparts during coordination meetings; 4) the extension of the JIT to Austria and Slovenia was promoted; 5) legal issues with third States such as the use of extradition, wiretapping and other measures were clarified and 6) funding was made available by the Eurojust JIT Funding Project.

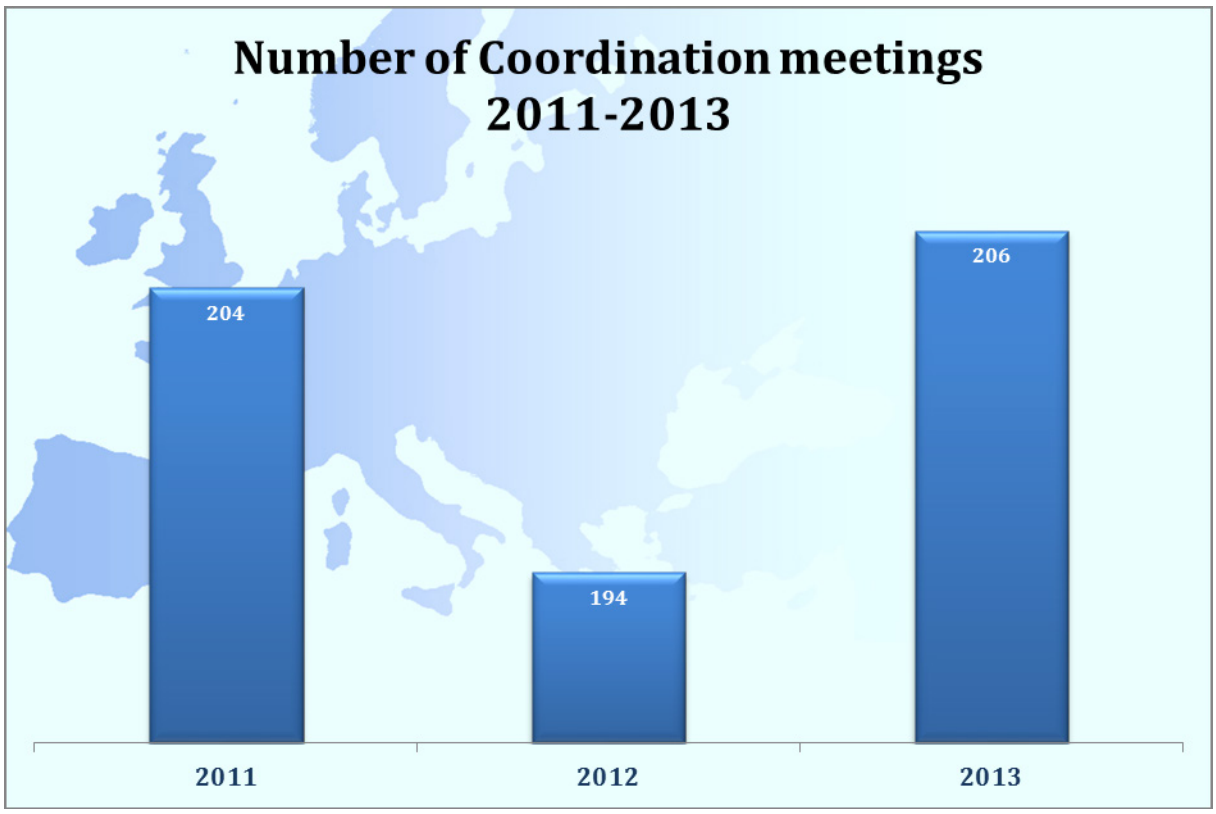
2. Statistics

The sources for these statistics are: Case Management System (CMS), excel files with records of coordination meetings and previous annual reports.

Eurojust Coordination Meetings in 2011-2013

Coordination meetings are normally held at Eurojust's premises in The Hague. In rare cases they are held outside Eurojust, in a Member State or in a third State.

Eurojust held a total number of **604 coordination meetings** from 2011 to 2013. The following chart shows the total number of coordination meetings per year.

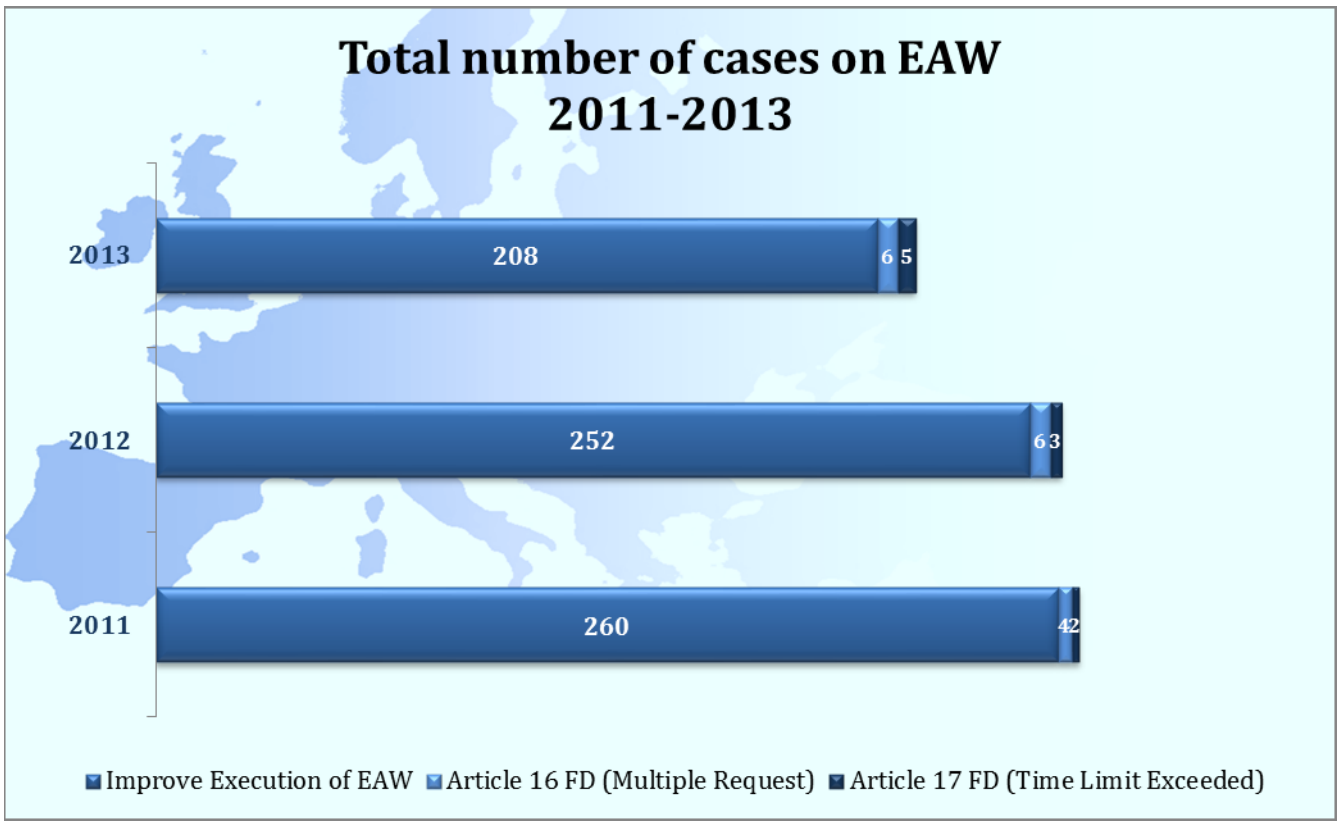


European Arrest Warrant cases in 2011-2013

Eurojust registered a total number of **741 EAW cases** between 2011 and 2013.

In 2011, 2012 and 2013 Eurojust registered a total of 264, 260 and 217 EAW cases, respectively.

The following chart shows the number of EAW cases registered at Eurojust per subcategory ("Article 16", "Article 17" and "improving execution of an EAW").



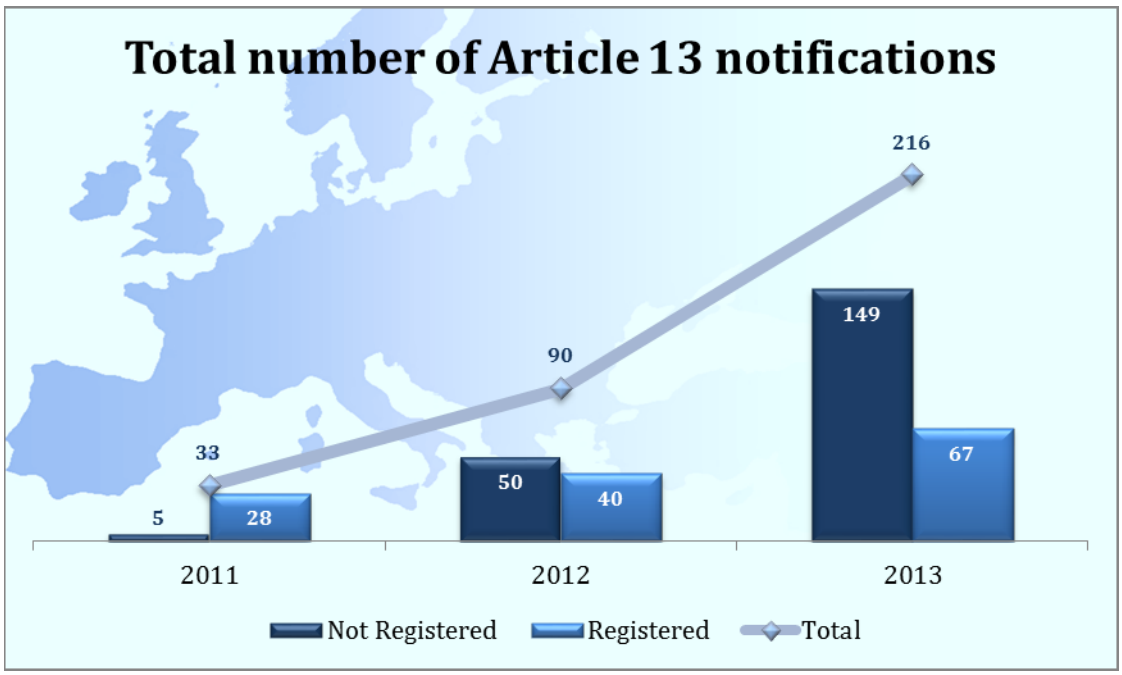
NOTE 1: It is possible to register a EAW case including multiple subcategories at the same time. The chart above illustrates the total per single subcategory. Therefore, the sum of the single subcategories is slightly higher than the grand total of cases per year reported in the introductory paragraphs of this section.

NOTE 2: The majority of the "Article 17" cases are received just for information and therefore they are not registered at the college level. During the reporting period, Eurojust received a total of 281 of such cases. In this report only the cases inserted in index (visible to everyone) are counted.

Article 13 notifications in 2011-2013

During the period 2011 – 2013, Eurojust received a total of 339 notifications under Article 13, of which 135 are linked to a registered case.

The following chart shows the number of notifications under Article 13 during the period 2011-2013.



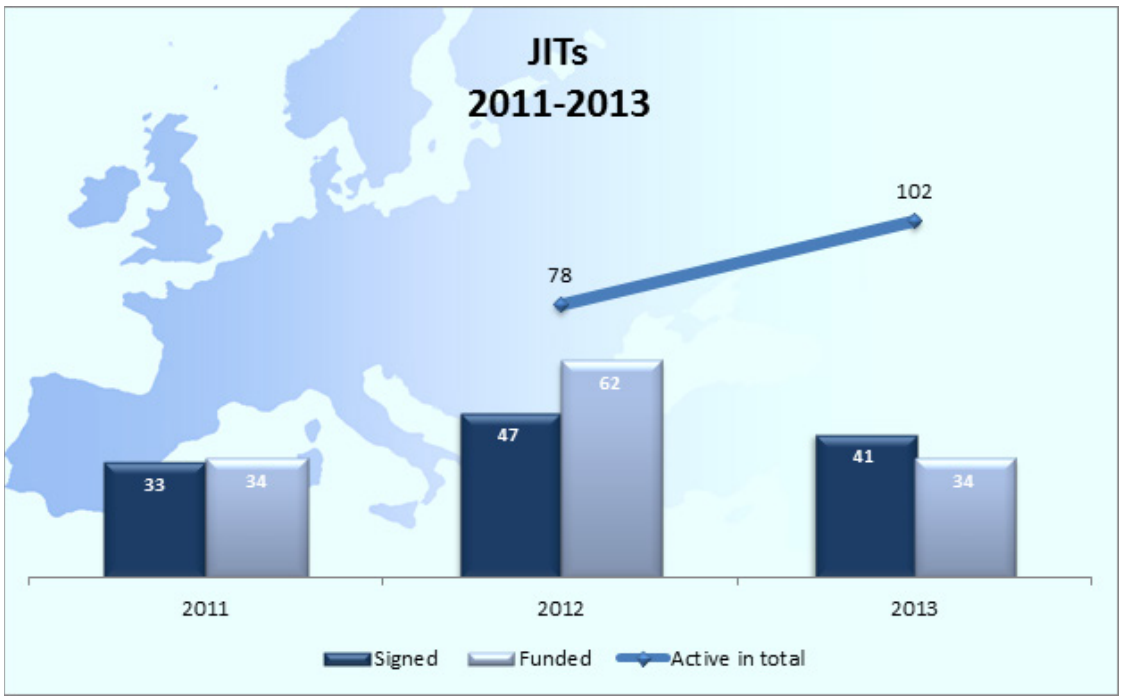
NOTE: Only 39.8% of Article 13 notifications are linked to a case registered at College level. The remaining cases are simple Temporary Work Files. For this reason, the date of creation of the Temporary Work File (and not the date of registration) is used to produce statistics on Article 13.

Joint Investigations Teams in 2011-2013

During the period 2011-2013 Eurojust provided support and assistance in the setting up of 121 newly created JITs and had funding 126 JITs.

It is therefore important to emphasise that a JIT active from previous years can be funded in a subsequent year and not all newly signed are funded.

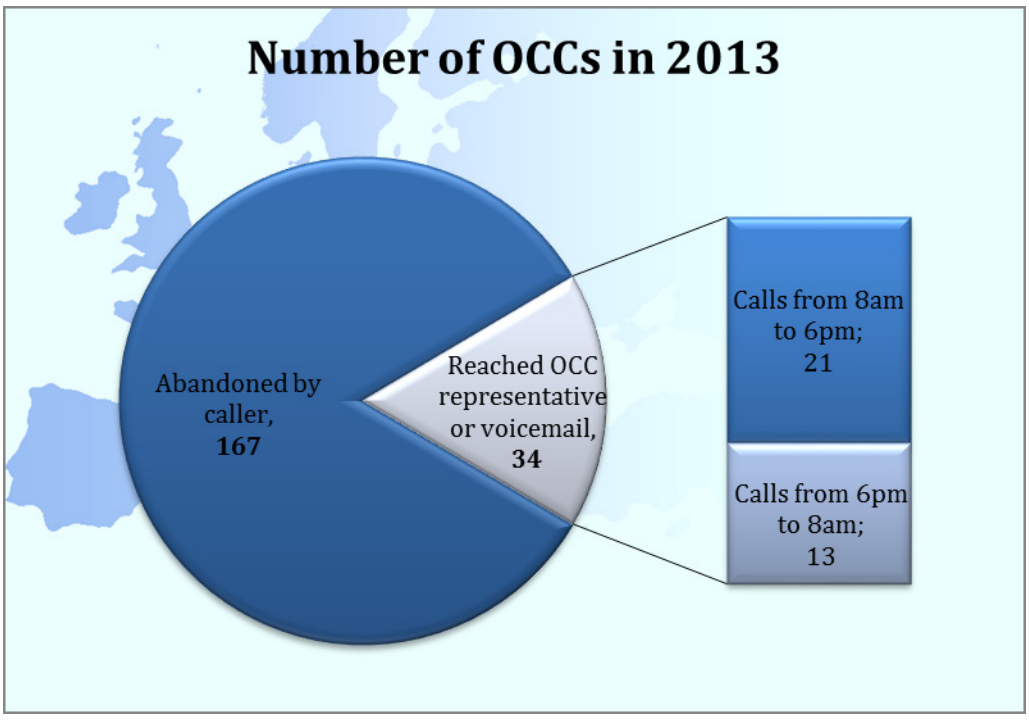
The following chart shows the number of newly created and funded JITs during the period 2011-2013. It is also possible to see the number of JITs active from previous years.



On-Call Coordination in 2013

In 2013 the On-Call Coordination system received a total of 201 calls, 167 calls were abandoned by the caller and 34 reached the OCC representative or the voicemail distributed by 13 desks.

The following chart shows the number of calls received during the period of time on the day.



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