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Delegations will find in the Annex the Conclusions of the meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the EU Member States held at Eurojust on 13 December 2013.

ANNEX

MEETING OF THE CONSULTATIVE FORUM
OF PROSECUTORS GENERAL AND DIRECTORS OF PUBLIC PROSECUTIONS
OF THE MEMBER STATES OF THE EUROPEAN UNION

EUROJUST, THE HAGUE, 13 DECEMBER 2013

CONCLUSIONS

Introduction

A meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (hereinafter "the Forum") took place at Eurojust's premises in The Hague on 13 December 2013. The meeting was convened by the Prosecutor General of Lithuania and was organised with the support of Eurojust.

The conclusions reached by the Forum on: i) "The future of Eurojust: How to achieve more efficiency? Relations between Eurojust and national authorities: needs and expectations" (Session I); ii) "Set-up and Functioning of the European Public Prosecutor's Office: What impact on national prosecution services? Forum members' views on the draft Regulation" (Session II); and iii) "After the Stockholm Programme: Strategic Guidelines for the Future of the Area of Freedom, Security and Justice: What Proposals from Forum members?" (Session IV), are summarised here under.

1. The Future of Eurojust

General aspects

1. Eurojust plays an important role in facilitating judicial cooperation and coordination of serious cross-border crime. The possibility offered to practitioners to meet, exchange information and take swift actions thanks to Eurojust's support is much appreciated. Nonetheless, further improvements could still be made to make Eurojust more efficient. For this reason, a new legislative basis that would improve Eurojust's role and efficiency is generally welcomed.

2. The Proposal for a Regulation on Eurojust (hereinafter the "Eurojust Proposal"), issued by the Commission in July 2013[1], raises a number of issues and concerns among Forum members to the extent that the practical added value of such reform can be questioned.

3. The text of the Eurojust Proposal requires further in-depth consideration in many aspects, as the outcome of the Eurojust seminar on the draft Regulation on Eurojust also points out[2]. The impact of the legal instrument "regulation" on national criminal justice systems should not be underestimated. The wording of a regulation which is wholly binding and directly applicable in the Member States ought to be as clear and precise as possible.

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[1] Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) (COM(2013) 535 final of 17.07.2013).

[2] Report on the Eurojust Seminar "The new draft Regulation on Eurojust: an improvement in the fight against cross-border crime?", The Hague, 14-15 October 2013 (Council doc. 17188/1/13 REV 1 EUROJUST 135 COPEN 226).

4. The timing of the Eurojust Proposal is questioned by several members of the Forum since the Sixth Round of Mutual Evaluations on the practical implementation and operation of the Eurojust and the European Judicial Network (EJN) Decisions has not been finalised yet and the practical effect of some provisions introduced by the revised Eurojust Decision in 2008 is still unknown. The results of this evaluation exercise should be duly taken into account, for example, with regard to the On-Call Coordination (OCC) and the obligation to inform Eurojust under Article 13 of the Eurojust Decision, in respect of which a real added value still needs to be demonstrated in practice.

5. With regard to the future composition of Eurojust, new means of cooperation will have to be developed with those Member States that will not take part in the Eurojust Regulation, i.e. Denmark and, possibly, Ireland and the United Kingdom.

6. The main goal of the reform of Eurojust should not be to adapt its organisation in order to be able to host the EPPO.

Eurojust's coordination role

7. The appreciated coordination role of Eurojust should be stressed and enhanced. The most recurrent and useful tools of Eurojust are coordination meetings and the support provided to Joint Investigation Teams (JITs), also from a financial point of view. In this regard, the recognised role of Eurojust in providing operational, technical and financial support to Member States' cross-border operations and investigations, including JITs (Article 4(1)e) as well as the possibility to act "on its own initiative" (Article 2(3)) are welcomed by several Forum members. Also the new inclusion in the tasks of Eurojust of the coordination of the execution of requests issued by a third State and requiring execution in more Member States is mentioned as a reinforcement of Eurojust's coordination role.

8. On a more practical level, Eurojust's role in the organisation of coordination meetings could be enhanced by extending its financial capacity to reimburse the costs of several participants per Member State where need be. Moreover, Eurojust could further exploit its role in identifying problems and solutions in judicial cooperation matters (for example, by making better use of the general topics discussed in the College) and advising Member States and relevant EU institutions accordingly.

9. According to some Forum members, the potential of Article 85 TFEU could be explored (and exploited) further, for example, with regard to an enhanced role of Eurojust in respect of the initiation of criminal investigations or the resolution of conflicts of jurisdictions.

National members' status and powers

10. The harmonisation of national members' operational powers, as proposed in Articles 8 and 9, is an issue that requires specific attention. On the one hand, according to some Forum members, the Eurojust Proposal is problematic because it does not take into account the variations in national prosecution systems, for example, systems where prosecutorial and investigative functions and powers are distinct. This matter requires a more flexible solution, which, like in the current Eurojust Decision, would allow Member States to adapt the powers of the national members to their respective systems i.e. by providing only common *minimum* powers granted to national members and maintaining the current "national safeguard clause". Moreover, in order to avoid problems when dealing with national authorities, it would be preferable to maintain the existing distinction between national members acting as "Eurojust member" or as "competent national authorities", instead of having only "European judicial powers" under Article 8. There are also doubts as to whether such powers would be in line with Article 85(2) TFEU which states that "*formal acts of judicial procedure shall be carried out by the competent national officials*".

11. On the other hand, other Forum members welcome the fact that the status of national members is clarified by the Eurojust Proposal, although the provisions related to the powers would need to be better specified. The powers of national members should not be regarded as "supranational" in relation to national authorities. Under the current legal framework, giving the national members a strong position by providing them with full national prosecutorial powers – even if such powers are rarely used in practice – contributes to the successful outcome of individual cases. Moreover, the possibility for the Member States to grant their national members additional powers not provided by the Regulation should be ensured.

12. The strengthening of such powers may create some incoherence between Eurojust's mission and functions on the one hand and national members' powers on the other, as the latter seem greater than the former. The question of whether Eurojust should exercise judicial coordinating and assistance functions or judicial authority functions, or both, remains without a clear answer in the Eurojust Proposal.

13. The requirement for the national member, deputy and assistant to have their regular place of work at Eurojust does not reflect the level of representation required in some Member States in view of their size and potential workload and thus, for this reason, some derogations should be foreseen.

Eurojust's scope of competence

14. The closed list of crimes that defines Eurojust's competence (Annex 1 of the Eurojust Proposal) raises serious concerns among the Forum members and is considered inadequate in meeting the practitioners' needs for several reasons. *First*, the closed list – which is not identical to either that of the European Arrest Warrant or the one proposed in the Europol Regulation – limits Eurojust's competence and ability to intervene, contrary to the reinforcement of Eurojust envisaged in general by the Eurojust Proposal. *Second*, the generic definitions of the forms of crime listed in Annex 1 are likely to create serious difficulties of interpretation and application of the provisions. *Third*, it is unclear who will have the competence to decide upon the concept of "serious crime" if there is no consensus among the Member States involved. *As a result*, the delimitation of Eurojust's competence hampers Eurojust's intervention and the efficiency of its coordination activities and, moreover, prevents Eurojust from addressing other (or new) forms of criminality not included in the list. For these reasons, Forum members recommend to keep the system flexible and include again the possibility for Eurojust to act in cases concerning "other types of offences" (Article 4(2) of the Eurojust Decision).

15. The exclusion of crimes for which the EPPO is competent ("PIF crimes") from Eurojust's competence (Article 3(1)) is another issue that needs further examination and clarification, especially taking into account that Article 85(1)(a) and (b) TFEU expressly refer to the role of Eurojust in PIF crimes. Article 3(1) – apparently in contrast to Annex 1 of the Eurojust Proposal (which specifically refers to "crime[s] against the financial interests of the Union" as a form of serious crime for which Eurojust is competent) does not take into account that Eurojust's support may be needed, for instance, in cases where, under the competence of the EPPO, requests have to be sent to Member States in which the EPPO cannot investigate directly or to third States. Therefore, also in this regard, Forum members suggest a flexible system maintaining Eurojust's competence in PIF crimes in order to have an efficient cooperation between the two bodies. If the intention is to prevent a possible overlap of competences between Eurojust and the EPPO, a solution could be to limit Eurojust's actions "on its own initiative" in PIF cases instead of completely excluding Eurojust's competence in those cases.

Eurojust's structure

16. According to many Forum members, the changes proposed with regard to the structure and governance of Eurojust are problematic and do not seem to meet the aim to reduce the administrative burden on the national members. The operational activities should benefit from the changes in the organisation of Eurojust. The College, established as the top of Eurojust's hierarchical structure, should maintain a decisive influence over the management of Eurojust in this respect. The specific nature of Eurojust cannot be disregarded in the context of the *Common Approach on decentralised agencies,* designed for other types of EU agencies.

17. The independence of Eurojust is crucial for its efficient functioning: as a judicial body, any political, government or institutional influence on Eurojust or perception thereof should be avoided. It is very important that national authorities can rely on the fact that there is no external interference in the work of Eurojust. In this regard, the role of the Commission (which, according to the proposed text, would have representatives in both the Management Board and the Executive Board) is unclear and may have a damaging impact on Eurojust's credibility and, consequently, on its operational activities.

18. The definition of the roles of Eurojust's internal bodies needs further clarification. The newly proposed Executive Board could create more levels in the management of Eurojust instead of resulting in a more efficient structure. Splitting the tasks of the College in either operational or management functions might result in unnecessary complications for the national member who will constantly need to know in which capacity he/she is acting ("College member" if operational matters or "Member State's representative" if management functions).

Data protection regime

19. The application of Regulation (EC) No 45/2001 to all personal data processed by Eurojust raises serious concerns. The rules should be adapted to the needs of practitioners and the system made compatible with the peculiar judicial nature of Eurojust which cannot be compared to other EU agencies. The provisions on the allowed period of storage of data should be reconsidered, thoroughly taking into account that a record of criminal activities is vital for Eurojust's tasks and purposes.

Exchange of information between Eurojust and national authorities

20. Since the current Eurojust Decision has not been fully implemented yet in all Member States or, where implemented, its application is still limited in practice, some Forum members question the added value of a further extension of the information exchange between Eurojust and the national authorities as proposed by the Commission in Article 21. An increase of the duties to report to Eurojust could overburden both the national judicial authorities that have to provide the information and Eurojust that has to provide feedback to them.

21. Other Forum members want to underline the positive aspect of the extension of the information exchange that would reinforce Eurojust's role in providing useful feedback to the national authorities on the basis of the information received. They suggest simplifying at national level the procedures to communicate the relevant information to Eurojust.

22. Some Forum members consider that the exchange of information needs to be improved further and that an enhanced role of the Eurojust National Coordination System (ENCS) could be useful in that respect.

Interaction between Eurojust and other European actors

23. As to the interaction between Eurojust and other European players such as the EJN, Europol, OLAF and the EPPO, there is still a big potential to enhance the cooperation and the exchange of information between them. The proposed new legal framework does not bring any real improvement in this regard. Effective interaction and synergy can however, not be achieved solely by legislative means and some issues could be resolved, or at least improved, in practice.

24. It is regrettable that the question of a clearer delimitation of competences between Eurojust and the EJN is not addressed in the Eurojust Proposal, although experience shows that the existing provisions are insufficient. It is suggested to introduce, for instance, a mandatory appointment at national level for one or more persons having the role as both EJN contact point and Eurojust correspondent.

25. To avoid duplication of work and ensure effective cooperation with Europol, it is suggested to regulate more precisely the competences of Eurojust and Europol where overlapping or even conflicts are possible, e.g. in the coordination of investigations and in the setting up and running of JITs.

26. As to the relationship between Eurojust and the EPPO, according to several Forum members, some aspects need to be clarified, although at this stage it is difficult to define them more precisely considering that the final profile of the EPPO is still unknown. The relationship between Eurojust and the EPPO as proposed by the Commission is rather limited because it is currently confined to a simple administrative assistance [*see also point 15. above and point 16. under the conclusions on Session II on the EPPO*].

27. The role of Eurojust in relation to third countries is very useful and appreciated in practice. For this reason, although new provisions will apply for the negotiations of agreements with third countries, it would be important to maintain Eurojust's involvement in this matter to represent the needs of practitioners.

2. Set-up and Functioning of the European Public Prosecutor's Office

General aspects

1. Forum members generally welcome the EPPO Proposal that addresses many concerns raised during the previous Consultative Forum meeting. However, the EPPO Proposal raises a number of important issues that need further reflection, clarification or amendment in order to ensure the added value of the establishment of an EPPO. The major points of concern are related to: competence, structure, rules of procedure on investigation, prosecution and trial proceedings, judicial control and the relations of the EPPO with its partners.

2. The Forum members took note of the Opinion of the Prosecutors General of Bulgaria, Italy, Portugal and Spain on the Commission's Proposal on the European Public Prosecutor's Office ("Opinion"). Some Forum members have concerns as to the EPPO's exclusive competence and the hierarchical structure, introduced by the EPPO Proposal and assessed positively in this Opinion (*see* points 5. and 7. below). Other key features of this Opinion, e.g. the support for the decentralised structure with double hatted delegated prosecutors or the need to improve Eurojust's role in an EPPO context, are shared by many Forum members (see points 6. and 16. below).

Competence

3. The negotiations of the draft PIF directive, which will form the scope of competence of the EPPO, require close follow-up. In view of the fact that VAT fraud cases are amongst the most serious and complex cases affecting the EU budget, a few Forum members regret that VAT fraud has been taken out of the scope of the draft PIF Directive. A few other Forum members suggest that the offences for which the EPPO shall have jurisdiction should be exhaustively and conclusively listed in the regulation itself so that differences in implementation on the basis of the proposed PIF directive could be avoided.

4. The provision on ancillary competence (Article 13 of the EPPO Proposal) would need to be revised. Most Forum members acknowledge the relevance of a provision on ancillary competence - in particular to avoid *ne bis in idem* cases - but consider the current wording of Article 13 problematic in light of Article 86 TFEU. They consider the term 'inextricably linked' too vague and in need of clarification and therefore

suggest the introduction and definition of objective criteria for assessing the preponderance of offences falling under the EPPO's original competence. The consultation mechanism between the EPPO and the competent national authorities to settle disputes on ancillary competence is subject to improvement. In this regard, Eurojust could play an important role which has to be further developed in the Proposal.

5. The exclusive competence of the EPPO with regard to offences affecting the EU budget raises concerns. Some members fear that in minor cases the costs of the proceedings conducted by the EPPO could be more costly to the EU budget than the offence itself. They suggest that the exclusive competence be restricted to offences committed by agents and members of the staff of the EU institutions, as well as to the offences in relation to direct expenditure from the EU budget. For all other cases, a concurrent competence for the EPPO and national prosecutors could be established. For several Forum members, this concurrent competence – possibly in combination with a right of evocation for the EPPO – would be more in line with the principles of subsidiarity, proportionality and legal certainty of national proceedings. They also believe that it could avoid the EPPO being overburdened with so-called 'bagatelle' cases. In order to define minor cases, they insist on the need to establish objective criteria which could be linked to, for example, the amounts involved or the absence of a cross-border dimension. A few Forum members believe, however, that a system of exclusive competence has the merit of being clear and simple.

Structure

6. The Commission's choice for a decentralised EPPO that is well embedded in national legal systems is generally welcomed. The strong focus on the role of the double hatted delegated prosecutors could bring added value, in particular because of their in-depth knowledge of the language and the national legal system in which they are working. That being said, several Forum members are of the opinion that any problems related to conflicting assignments arising from the simultaneous exercise of duties as national prosecutor and delegated prosecutor, are not being adequately addressed in the EPPO Proposal. With regard to the possibility for the EPPO to instruct delegated prosecutors, some Forum members suggest the introduction of a concrete evaluation test based on predefined criteria in order to determine whether a case may be better investigated by the EPPO or at national level. This could avoid

conflicts of interest and ensure independence.

7. With regard to the structure of the decentralised model, some Forum members support the hierarchical model proposed by the Commission, whilst many others plead for a collegial model. According to the latter, it is important to have prosecutors from all Member States at each level because their knowledge of the different legal systems, traditions and languages may be crucial in the decision making process and could promote effectiveness as well as independence. Other Forum members suggest a compromise solution: a hierarchical model with collegial features such as a flexible system of ad hoc chambers which would be open to all national representatives.

Rules of procedure on investigations, prosecutions and trial proceedings

8. Forum members underline the need for an appropriate level of decision making within the EPPO. Most members regret that a clear division of tasks between the centralised and decentralised level is currently missing in the EPPO Proposal. Some Forum members believe that under the centralised level the central office should only instruct, coordinate and monitor whilst the delegated prosecutors should be in charge of the main part of operational and judicial powers and that this should be clarified in the Regulation. Others fear that the EPPO's power to instruct the delegated prosecutors could raise difficulties in relation to the independence of the national authorities and could possibly conflict with national constitutions. In any case, most Forum members are convinced that clear rules on the pre-determination of tasks for the EPPO and the delegated prosecutors are necessary in order to guarantee effectiveness and transparency.

9. As regards cooperation amongst delegated prosecutors, the question arises as to how the EPPO Proposal relates to mutual recognition and other forms of cooperation. The cooperation mechanism within the EPPO and amongst delegated prosecutors should go well beyond traditional forms of cooperation such as MLA or mutual recognition. The actions of the EPPO should be based on direct execution and delegated prosecutors should have cross-border investigative powers in all participating Member States. This crucial feature of the EPPO Proposal should be written down more explicitly in the text. The Forum observes that the EPPO Proposal is silent on other more practical issues of cooperation amongst delegated prosecutors (such as language, terms or forms of communication) which should equally be clarified in the

text.

10. The EPPO will have a certain margin of discretion with regard to decisions to start investigations or to wind them up. With regard to the start of investigations, several Forum members deplore the lack of notification regarding the start of investigations and the absence of a duty to state reasons to support a decision not to start investigations. With regard to the end of investigations, some Forum members have concerns about the possibility for the EPPO to propose transactions. They stress the vagueness of the wording 'proper administration of justice' and ask for clearer, more objective criteria. They also insist on other requirements: a judicial agreement on the transaction, the involvement of injured parties, the need to take into account the Member States' position, and the possibility to subject the EPPO's decision to judicial review, in particular, in light of the *Gözütok and Brügge* judgment (2003).

11. More precise criteria are deemed necessary with regard to the rules for determining the jurisdiction and competent court, in light of the right to a fair trial as enshrined in Article 47 of the EU Charter of Fundamental Rights and Article 6 of the European Convention on Human Rights. Article 27(4) of the EPPO Proposal is problematic in this regard because the EPPO has too much discretion to determine the trial court. The criteria listed in this provision are not alternative and the provision does not specify the cases where one or another criterion should apply. This will encourage forum shopping and give excessive discretion to the EPPO which the vague criterion of "proper administration of justice" will not be able to restrict. It is therefore suggested that the EPPO Proposal include such a basic criterion and sub-criteria.

12. With regard to the list of investigation measures (Article 26 of the EPPO Proposal), some Forum members consider that the EPPO Proposal with its combination of European and national conditions constitutes a balanced solution. However, a considerable number of other Forum members fear that this approach could mean a step "backwards". For instance, prior judicial authorisation could be required for PIF cases on the basis of the EPPO Proposal whilst it is not required in similar national cases and could thus entail a risk of dual standards within one Member State depending on the nature of the offence. A number of Forum members therefore suggest that there should be no mandatory judicial authorization at EU level, but that it should be left to national legislation to foresee an adequate level of safeguards

either through judicial authorization or other mechanisms. Other Forum members would like to propose that at least the concept of "judicial authority" be interpreted broadly so as not to undermine the effectiveness of this provision. Another point of concern relates to the type of investigation measures included in the Proposal. For several Forum members, the list is unnecessary and includes measures that are not available in some Member States. This could require profound changes to procedural criminal law and could be in conflict with the duty to respect the different legal systems and traditions of the Member States (Articles 67 and 82(2) TFEU).

13. For many Forum members, the provision on admissibility of evidence and its reference to Articles 47 and 48 of the EU Charter of Fundamental Rights (Article 30 of the EPPO Proposal) is pragmatic and satisfactory. They consider that Recital 32 gives a good clarification of the scope of this provision. The only alternative would be an approximation of criminal procedural law which for the moment is - according to them - neither feasible nor desirable. Other Forum members consider free movement of evidence a very sensitive and complex issue which does require prior uniform rules on the gathering of evidence. According to them, a mere reference to the EU Charter of Fundamental Rights may not be sufficient.

Judicial review

14. Judicial control of the EPPO's acts should be better regulated in the EPPO Proposal, in particular with regard to dismissals, transactions, indictments and choice of jurisdiction in cross-border cases. Such judicial control is foreseen in many national constitutions and should be included in the EPPO Proposal precisely to avoid discrepancies with the national legal systems. As to the court that should be performing this judicial control, some Forum members consider that this should be in the hands of the national courts whilst others prefer a prominent role for the Court of Justice of the EU.

Relations with partners - Eurojust

15. The relation of the EPPO with its partners is not tackled sufficiently in the EPPO Proposal. For instance, the hypothesis of enhanced cooperation poses many practical

problems which are currently not addressed.

16. Eurojust's role vis-à-vis the EPPO should be clarified. As it is clear from the text of the EPPO Proposal that the relationship between the EPPO and Eurojust is crucial, the Regulation should contain an unambiguous demarcation of competence between Eurojust and the EPPO in order to ensure efficient cooperation and avoid duplication of tasks. Moreover, in view of Eurojust's extensive experience, measures are needed to ensure that Eurojust's core business would be strengthened rather than weakened. Several Forum members fear in this regard that the provisions which require Eurojust to offer full support to the EPPO on a zero cost basis, and to provide the EPPO with data (including personal data) without ensuring reciprocity in such cooperation, are problematic [see also points 15. and 26. under the conclusions on Session I on Eurojust].

17. As to the relations of the EPPO with non-participating Member States and third countries, the option included in Article 59(4) of the EPPO Proposal seems difficult to apply in practice. The Commission's suggestion to renegotiate international agreements at EU level is welcomed by a number of Forum members, who underlined that such negotiations could however, take a lot of time.

3. After the Stockholm Programme: Strategic Guidelines for the Future of the Area of Freedom, Security and Justice

Main achievements and main challenges

1. Whilst acknowledging the important achievements realised since Tampere, Forum members consider that further developments are needed; and that the Treaty of Lisbon offers a good opportunity to do so.

2. The Framework Decision on the European arrest warrant (EAW) is certainly the most successful instrument on judicial cooperation in criminal matters to date but its application has revealed shortcomings which should be assessed and addressed. With regard to the other instruments, most Forum members would like to express various concerns; some general, in relation to the cumbersome application of former third

pillar instruments; and others which are more specific to some instruments such as the Framework Decision on mutual recognition of confiscation orders or the Framework Decision on mutual recognition of freezing orders (even if it is recognised as being particularly useful with regard to the seizing of evidence).

3. The reasons for the problematic application of these instruments are manifold due to the multiplicity, inconsistencies and lack of coherence among them; insufficient knowledge of practitioners in this regard; lack of effective control over the transposition and implementation at national level and the current absence of "sanctions" at EU level in the event of non-implementation or incorrect implementation; and linguistic barriers.

4. In view of the foregoing, Forum members propose that the future strategic guidelines focus on the following issues: consolidation, implementation, evaluation, enforcement, mutual recognition, operational cooperation and training.

Consolidation, implementation, evaluation and enforcement

5. The strategic guidelines should concentrate on consolidating the EU criminal justice *acquis* rather than proposing new legislation. However, in some specific areas of law some legislative initiatives or development would be desirable (see points 10. and 11. below).

6. A general survey of all existing instruments is needed with a view to assessing and addressing possible shortcomings, in particular as regards their implementation by Member States. With regard to the EAW, most Forum members consider that its shortcomings, such as proportionality issues, should be addressed but not by means of a revision of the Framework Decision on the EAW. A re-opening of the negotiations on this instrument could lead to legislative adjustments which could affect the effectiveness of the EAW and jeopardize trust between Member States.

7. Evaluation should go beyond a mere control of the implementation status and requires a 'problem and efficiency' analysis. It will become necessary to sift out inconsistencies, lack of coordination and gaps among the different legal instruments and to ensure uniform terminology and synchronicity of definitions. It should be examined whether mutual recognition is impeded by differences in national procedural law or by different standards (e.g. *in absentia* proceedings, proportionality

checks, definitions of list offences, integration of Court of Justice case law or prison conditions). According to some Forum members, the experience of Eurojust could be integrated here in order to achieve optimum utilisation of existing resources.

8. With regard to Article 10 of Protocol No 36 to the Treaties which foresees that the pre-Lisbon ex-third pillar acquis will be submitted to the full powers of the Court of Justice and the Commission at the end of the transitional period (December 2014), Forum members consider that the reflections on the future strategic guidelines are an excellent opportunity to discuss the setting out of priorities for the enforcement strategy of the Commission.

Mutual recognition and approximation

9. In general, mutual recognition should remain the cornerstone concept for the future AFSJ and approximation a facilitator of the former.

10. With regard to approximation, Forum members suggest a cautious, step-by-step approach, underlining that even though Articles 82 and 83 TFEU have created new opportunities compared to the pre-Lisbon Treaty framework, Article 67 TFEU also requires respect for the different legal systems and traditions of the Member States. Despite the fact that approximation is generally not seen as a priority, some Forum members look forward to initiatives with regard to the determination of criminal offences and sanctions concerning serious transnational crime, in particular money laundering and organised crime. Others urge the adoption of the Commission's recent package of five legal measures to make progress on the Procedural Rights Agenda or the adoption of the EPPO Proposal. Others continue to underline the need for an instrument on the admissibility of evidence, possibly in light of the relevant provision included in the EPPO Proposal.

11. With regard to mutual recognition, several Forum members have high expectations vis-à-vis the EIO. They do not feel the need for any further legislative developments in the field of mutual recognition in the near future. Some Forum members consider however, that in the long run two unregulated areas related to the principle of mutual recognition should be settled at EU level: first, *ne bis in idem* (as Article 54 of the Schengen Implementation Convention is out of date and the Court of Justice struggles to develop the relevant case law); second, the transfer of proceedings (as

the relevant Council of Europe Convention is out of date and several mutual recognition instruments would benefit from a legal instrument on this issue).

Operational cooperation

12. Many Forum members would like to stress the importance, in the future JHA Programme, of operational cooperation in which both Eurojust and the European Judicial Network (EJN) have played a successful role and will continue to play a crucial role. Some Forum members are, however, of the opinion that the potential of the EJN has not yet been fully exploited and is an issue which needs further development. Other Forum members consider that the set-up of the EPPO and the reinforcement of Eurojust are two key priorities for the post-Stockholm Programme.

13. Joint Investigation Teams and videoconferences are for several Forum members, good examples of operational cooperation which have facilitated the cooperation with judicial authorities in other Member States and increased trust between practitioners.

14. As one of the key features of successful operational cooperation is direct contact between judicial authorities, the tendency in some Member States for central authorities to try to take over the roles conferred by EU criminal justice instruments to judicial authorities raises concerns.

15. For some Forum members, the incomplete and not well organised information on the EJN webpage makes the practical application of legal instruments very difficult. Therefore, it is suggested that EU institutions invest more in keeping information for practitioners easily accessible and updated.

16. Finally, Forum members suggest supporting further improvements in the use of information and communication technology in the justice system (e-justice).

Trust and training

17. Forum members acknowledge the importance of continuous, systematic training concerning different aspects of EU law for practitioners. Article 82 TFEU offers a

strong legal basis for an ambitious chapter in the future JHA-Programme in this area.

18. As to how training could be improved, some Forum members propose the conclusion of agreements encompassing common training or exchange programmes between national competent institutions or the posting of national prosecutors to the national desks of Eurojust. Others suggest instead further development of existing European fora (e.g. European Judicial Training Network, ERA) or the creation of a European Academy for the Judiciary.

19. Several Forum members underline not only the need for legal training, but also that the need for language training, and training on legal terminology needs to be addressed.

The future of the Consultative Forum

20. Forum members appreciate the current cooperation with Eurojust and wish it will continue in the future. Some Forum members would welcome a formalisation of the Forum's role which would strengthen the importance of the practitioners' opinion for the European legislator and policy maker. Another suggestion was to allocate specific tasks to the Forum, for instance that it would act as a liaison mechanism in relation to the EPPO or in relation to the EU internal security strategy.