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from: Presidency
to: CATS

Subject: Proposal for a Regulation on the European Union Agency for Criminal Justice
Cooperation (EUROJUST)
- Strategic Discussion on Governance

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

The main goal of the proposed reform of Eurojust structure is to allow Eurojust to perform its tasks more effectively and efficiently. In order to remove the administrative burden currently faced by the national members, the Commission's proposal introduces an Executive Board to take responsibility for administrative matters at Eurojust. Its proposal attempts to distinguish between the operational and administrative functions of Eurojust and makes a distinction between the Colleges management functions in operational and non operational matters with administrative issues and preparatory administrative work being undertaken by the Executive Board and the Administrative Director. It provides that in addition to the national members, the College will also comprise two representatives from the Commission when it exercises its management functions in non-operational matters.

The Executive Board will comprise the President and Vice-Presidents, one other national member, the Commission and the Administrative Director. The Administrative Director will not have voting rights.

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

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

¹ Doc 8488/14

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

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

Against this background, several models could be considered. One alternative could be to expand the existing Eurojust Presidency team to include a representative from the Commission and two other National Members (on rotation) to form a new Executive Board. The Executive Board would be responsible for overseeing the day-to-day administration of Eurojust and act as a preparatory body for the non-operational tasks of the College. The College could then focus on operational and policy work whilst retaining general control over administrative matters linked with operational issues, i.e. adoption of the budget, the annual report and annual and multi-annual work programmes in line with the overall aim of the Commission's proposal to improve the effectiveness and efficiency of Eurojust and reduce the administrative burden faced by National Members.

In light of these differing views, CATS is invited to consider whether the COPEN Working Group should;

a) continue its deliberations on the basis of the proposed governance structure presented by the Commission in the draft Regulation;

b) consider institutionalising the existing working practices at Eurojust such as the Presidency Team as suggested by Eurojust;

c) develop an alternative model which bridges the gap between the Commission's proposal and other views expressed which would develop a governance structure inspired by the practical operational experience of Eurojust and comply with the Common Agreement on EU decentralised Agencies to the maximum extent possible taking account of the particular specificities of Eurojust.

or

d) adopt a similar model as Europol, i.e. Executive Director and external management board comprised of representatives from each Member State. This model would have to take account the existing Collegiate model of Eurojust.
