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NOTE

From: General Secretariat of the Council
To: Working Party on Cooperation in Criminal Matters

Subject: Comments on revised Articles 4-6, 10-16 and 18 of the Draft Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust)

At the COPEN Working Party of 13 June, Delegates were invited to submit comments on the revised Articles 4-6, 10-16 and 18 of the Commission's proposal on Eurojust Regulation. Austria and Portugal submitted comments which are attached in the Annex.

Austria

The Austrian Delegation would like to submit the following written comments with regard to the new proposal (10526/14 EUROJUST 109):

General remarks with regard to the mandate of Eurojust and Europol

Concerning Art 2 (a) of the general approach of the proposal for a Europol Regulation Austria is of the opinion that it is not clear whether Europol's mandate would encompass the coordination of judicial authorities within a narrow meaning, such as public prosecution services and courts, as the text of Art 2 (a) of the general approach does not copy Art 88 TFEU anymore and has a broader meaning now. Recital 8a referring to Art 2 (a) doesn't address this problem either. The wording "interests of the Member States" makes the recital even more unclear.

Presently Eurojust and Europol already seem to have conflicts concerning their competences.

Austria is of the opinion that this situation will not be improved; in fact quite the opposite might be the case. Therefore we would appreciate an opinion of the Legal Service of the Council on this matter.

Article 5

With regard to para 2 Austria would be in favour of explicitly mentioning the horizontal work in lit j: *“when preparing strategic reports, policy papers, guidelines for the benefit of national authorities and opinions pertaining to the operational work of Eurojust as well as any other horizontal tasks.”*

Horizontal work is an increasingly important area of Eurojusts work and deals with activities requiring an institutional approach or a process-oriented approach across the whole organisation. Therefore it seems worth mentioning horizontal tasks within Art 5; those tasks should be left exclusively to the College. Although lit j already covers a few examples of horizontal work further explanation should/could be given within a recital among other examples, such as: preparation of policies/opinions of Eurojust on areas of its competence, relations with partners (in particular OLAF; Europol, EPPO etc.), development of guidelines intended to regulate the operational work of Eurojust (such as. internal rules on the preparation of a Eurojust opinion in case of conflicts of jurisdiction, how to organise a coordination meeting or the development of the Case Management System). In fact it might be possible to define horizontal work as everything which is not purely administrative or operational (case) work of Eurojust.

With regard to para 5 the wording might prove to be too strict. The relationship concerning para 2 (k) as well as Art 14 para 3 doesn't seem to be clear enough. Furthermore this provision might give rise to the interpretation that the College is not top of the hierarchy within Eurojust. For Austria it seems at least necessary to delete the National Member from the first sentence as currently two National Members would be members of the Executive Board and would have to engage with administrative work.

Article 10

Austria strongly supports the proposal of the presidency that the Administrative Director (AD) shall attend the meetings of the College without a right to vote. It seems necessary for the AD to have a notion of the tasks of Eurojust and knowledge of the work of the College and the National Members as operational issues are discussed in the College meetings, as well. This information seems essential for the proper fulfilment of the AD's tasks. Irrespective of the discussion whether the Commission shall have a right to participate and vote in College meetings with regard to issues that may be concerning its interests the Austrian delegation welcomes that the two formats of the College (administrative and operational) have been deleted. It seems to be the more practical approach – the division would have been more of an academic nature.

Article 11

Austria is of the opinion that Eurojust is an agency which cannot be compared with others in the EU. Therefore we would be against the idea that President and the Vice-Presidents should be subject to EU-staff Regulations as well as the idea of replacing the National Member in case of his/her election as President or Vice-President. The idea of the College of Eurojust was that every Member State should be represented equally by one vote.

However, as Luxemburg stated during the last COPEN working party, it seems necessary to support the National Member in case of his/her election. Austria is of the opinion that this could be clarified in a recital, as the workload varies a lot throughout the Member States, e.g. the situation in Germany cannot be compared with the one in Austria or Malta. Hence a flexible approach seems to be needed:

“When a national member is elected President or Vice-President of Eurojust the Member State concerned shall assess whether and to what extent further support should be provided to the National Desk to ensure the proper and efficient fulfilment of its tasks.”

Article 12

With regard to the relationship with the European Public Prosecution Office (EPPO) the Austrian Delegation is of the opinion that discussions should be postponed until EPPO's structure is further clarified. Basically we would be against the proposal for para 3, as it doesn't take account of the special relationship between Eurojust and the EPPO. It is of crucial importance that the EPP may attend the College meetings on his/her will. The EPP will not be “any person whose opinion may be of interest” (Art 10 para 3) for the College and cannot be compared to “any other person”.

Article 13 para 2

The proposal added a reference to Article 7 para 4. The intention seems to be to clarify that also the Assistant may be entitled to exercise the right to vote. However, the Austrian Delegation is of the opinion that the Assistant should be mentioned for the sake of clarity:

*“Each member shall have one vote. In the absence of a voting member, the deputy **and in his/her absence the assistant** shall be entitled to exercise the right to vote in accordance with Article 7(4).”*

Article 14

In first place it seems to be crucial for the further discussions that the COPEN working group decides upon how the work should be divided between the College and the Executive Board. Some Member States feel that the administrative burden on the College could be reduced even more, others have stated their concerns about a duplication of the administrative work as many tasks will be approved by the Executive Board and afterwards adopted by the College. In general there seems to be a common understanding that the College should be hierarchically on top of Eurojust.

For Austria there are two different approaches:

1. On the one hand the Executive Board could be given more competences and may decide more issues without the College (in the meaning of Art 14 para 3 (b)) and will be accountable to the College for its work. Additionally the College could be given the possibility to take over particular issues.
2. On the other hand the final decision could be left to the College in general (in the meaning of Art 14 para 3 (a), (d) and (e) etc.). The College may still decide to refer certain issues to the Executive Board or the Administrative Director (Art 5 para 4). In this case it neither seems to be necessary that the College should be given the right to take over any issues nor that the Executive Board should be accountable to the College as the College could revoke its decision on the referral of that issue and decide on its own at any time.

Concerning the proposed text the Austrian delegation would like to see para 1 and 2 as recitals explaining the meaning of para 3. Furthermore the Austrian Delegation would like to draw the attention to the fact that the members of the Executive Board have increased by one (para 5). It might be helpful to provide for a casting vote in case the votes are equally divided (para 6). With regard to para 9 the Austrian delegation would like to refer to the arguments presented concerning Article 12. The EPP has to have a right to attend meetings of the Executive Board.

Article 15 para 3

With regard to “substantial amendments” (second sentence) Austria is wondering how they will be defined and what impact it might have if the Executive Board decides on its own and the College is of the opinion that the amendments made by the Executive Board are of an substantial nature and would have to be decided by the College. We see a risk of creating dissonances between the two bodies.

Article 16

With regard to the external assessment of the AD’s work Austria is not convinced that this seems to be the best of all solutions. Perhaps an evaluation conducted by the Executive Board would be sufficient as well.

Portugal

In relation to Articles 4-6, 10-16 and 18 of the Commission's proposal on Eurojust Regulation, Portugal would like to make the following comments:

1. with article 11 (5), which provides that the President and Vice-Presidents cease acting as national members and may be replaced by other qualified persons. In that case we can have three Member States represented twice at the College and therefore with double voting rights (see article 13, paragraph 2). In our opinion this represents a violation of the principle of equality among Member States;
2. with article 14 (5), that establishes that the Executive Board shall be composed by 6 elements, namely the President and Vice Presidents (3), a representative of the Commission and two other national members, in a rotation system. Since that is not foreseen a quality vote, it is possible to anticipate problems in the decision making process. We wondered if it would be better the Commission's proposal which provided for 5 elements.

Moreover,

3. we strongly support that there is a need to a clear division of competences between the Executive Board (administrative tasks) and the College (operational tasks), which, in our view can be partially solved by introducing a definition of operational tasks and administrative tasks;
4. however, this question should be looked very carefully because of the indirect impact it may have on the power of mobilizing resources for the operational work (if the national members are removed from all administrative functions). A point that should deserve our better attention and extra care in drafting the regulation is a correct evaluation about where the policy work ends and begins the administrative work.