



Council of the
European Union

012873/EU XXVI. GP
Eingelangt am 27/02/18

Brussels, 27 February 2018
(OR. en)

6029/18

JAI 92
CATS 5
EUROJUST 22
CYBER 36

COVER NOTE

From:	EUROJUST
To:	Delegations
Subject:	12th Meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union Eurojust, The Hague, 6 October 2017 - Conclusions

Delegations will find in Annex the Conclusions of the 12th meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the EU Member States held at Eurojust on 6 October 2017.

6029/18

GG/mj

DG D 2

EN

12TH MEETING OF THE CONSULTATIVE FORUM OF PROSECUTORS GENERAL
AND DIRECTORS OF PUBLIC PROSECUTIONS OF THE MEMBER STATES
OF THE EUROPEAN UNION

EUROJUST BUILDING, THE HAGUE
6 OCTOBER 2017

CONCLUSIONS

Introduction

The 12th meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (the Forum) was jointly convened by the Prosecutor General of Estonia, *Lavly Perling*, and the Attorney General of Malta, *Peter Grech*.

The meeting was opened by the President of Eurojust, *Michèle Coninx*, and was co-chaired by the two convenors of the meeting.

The Forum discussed and reached conclusions on the following topics:

1. The use of digital tools in criminal proceedings;
2. Data retention;
3. The Eurojust meeting on illegal immigrant smuggling; and
4. Eurojust: Developments in key priority areas and institutional outlook.

Session I — The use of digital tools in criminal proceedings

The following conclusions are based on the written contributions submitted in advance,¹ and on interventions expressed by Forum members during the meeting:

1. The Forum is grateful to its members for the large number of replies that it received to the *Questionnaire on the use of digital tools in criminal proceedings* and agrees to share the Summary of Replies and Compilation of Replies with the EU institutions and with the practitioners in the Member States.
2. The Forum concludes that much progress has been achieved in the Member States in relation to the use of electronic signatures and digital information exchange. The use of ID cards and electronic signatures in Estonia is a leading example. The Forum takes note that further progress is being made in many Member States and it encourages the Member States to further invest in the digitalisation in criminal proceedings.
3. The Forum considers that the advantages and disadvantages that have been raised by a number of Forum members in their replies are relevant and is convinced that they will be useful for further reflection and further developments in relation to digitalisation in criminal proceedings.
4. The Forum acknowledges that, at the level of judicial cooperation among the Member States, experience with the use of electronic signatures and digital exchange of information is, so far, rather limited. Member States are encouraged to reflect on further progress in the cross-border context.
5. The Forum takes note of the results of the Eurojust College Operational Topic ID 37566 which reveal that, while a majority of Member States consider, in principle, the transmission of mutual legal assistance (MLA) and/or European Investigation Order (EIO) requests — by fax or e-mail only — sufficient for the purpose of execution, a considerable number of Member States still request a subsequent transmission of the original MLA/EIO request. The Forum believes that the latter delays and makes cross-border cooperation more cumbersome. The Forum would also like to invite Eurojust to share the results of Operational Topic ID 37566 with the EU institutions and with national practitioners for whom this information is very valuable. The Forum agrees that the work should continue on this topic to ensure that MLA requests and EIOs sent in a digital format and in a secure way would be accepted in all Member States and not lead to refusals.
6. Finally, the Forum believes that the European Commission's initiative regarding the creation of an e-portal for the transmission of MLA and EIO requests is an important tool for the future of judicial cooperation in criminal matters. The Forum is looking forward to a swift development of this tool.

Data retention

1. The Forum takes note of the analysis conducted by Eurojust on the data retention regimes

¹ Written contributions were received from 26 representatives from the following Member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the Netherlands and the UK.

in Europe in light of the Court of Justice of the European Union (CJEU) ruling of 21 December 2016 in joined cases C-203/15 and C-698/15.

2. The Forum considers that data retention is a critical tool in the fight against and the prevention of criminal activities, as it is a fundamental investigative instrument.
3. The Forum takes note of the fact that a number of practitioners who contributed to the report highlighted concerns. In this context, reference was made to the challenge in defining 'serious' crime as a determining factor for data retention.
4. In this context, the Forum encourages Member States to inform Eurojust, through the appropriate channels, about legal and practical issues stemming from the CJEU ruling that could affect judicial cooperation.
5. The Forum invites Eurojust to keep monitoring and reporting on developments that can mainly, but not exclusively, affect judicial cooperation, by closely liaising with practitioners.
6. The Forum looks forward to receiving such information and reiterates its keen interest in seeing the matter resolved.
7. The Forum takes note of the ongoing work of the Council Working Party on Information Exchange and Data Protection (DAPIX) and the preparation by the European Commission of a guidance document on the application of data retention rules for law enforcement purposes in line with the CJEU ruling.
8. The Forum underlines the importance of a balance between the right to privacy and the right to safety and security.

Session II — Eurojust meeting on illegal immigrant smuggling (IIS)

1. The fight against IIS remains a top priority for the European Union. Due to its cross-border nature, a joint effort by all Member States is essential.
2. Forum members take note of the outcome of the Eurojust meeting on IIS, held on 15 June 2017, and endorse its conclusions.
3. Forum members particularly acknowledge the need to further promote the judicial dimension at an early stage of investigations, ensure appropriate and timely exchange of information between all stakeholders, strive to prosecute the entire organised crime group, as opposed to national segments, and identify possible links to existing cases in other Member States and at Eurojust.
4. Enhancing cooperation with third States of origin and transit is also considered essential to ensure that information collected by EU actors operating in third States can be turned into admissible evidence.
5. National authorities are encouraged to launch financial investigations to ensure an effective disruption of the business model of the organised crime groups.
6. Forum members are satisfied to hear that every fourth case referred to Eurojust has been subject to a coordination meeting or a JIT, and encourage national authorities to continuously refer more cases to Eurojust and make full use of judicial cooperation instruments and tools already available, such as JITs.
7. Forum members acknowledge the importance of other effective mechanisms to facilitate cooperation and take note of Member States' initiatives, such as the posting of Liaison Magistrates to countries of origin of IIS, as well as the Task Force on IIS in the North Sea region, which is supported by Eurojust, comprising judicial and law enforcement professionals from France, the UK, Belgium and the Netherlands.

Session III — Eurojust: Developments in key priority areas and institutional outlook

1. The Forum takes note of the latest developments in Eurojust's priority crime areas: terrorism, cybercrime, trafficking in human beings (THB) and IIS. Particularly striking is the increased operational support by Eurojust in terrorism and THB cases.
2. Recent Eurojust publications in the field of terrorism are brought to the attention of Forum members, most notably the fourth edition of the *Foreign Terrorist Fighters* report. Major themes that Eurojust has identified include the need for a common legal framework and a multi-disciplinary approach, returnees and de-radicalisation, cooperation with third States, digital evidence and battlefield evidence.
3. The Forum welcomes the appointment of a Seconded National Expert (SNE) on terrorism, as part of the efforts to enhance operational cooperation between Eurojust and Europol's European Counter Terrorism Center (ECTC).
4. The first activities of the European Judicial Cybercrime Network (ECJN) are outlined, as well as the common challenges in combating cybercrime identified by Eurojust and Europol in a joint paper of March 2017. These challenges are also featured in Eurojust's regularly

published *Cybercrime Judicial Monitor*.

5. Eurojust's Thematic Group on IIS continues to support the needs of prosecution authorities, identify obstacles to prosecution and improve the use of EU legal instruments. Key challenges in this crime area include information exchange leading to admissible evidence, judicial cooperation between Member States and with third States, and concerns about translation and interpretation.
6. Eurojust continues to strengthen its cooperation with relevant partners. Eurojust brought to the attention of Forum members that it recently concluded a Cooperation Agreement with Ukraine and Memoranda of Understanding with the European Union Intellectual Property Office (EUIPO) and the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA). A Letter of Understanding with the European External Action Service will be signed on 10 October 2017.
7. Since the last Forum meeting in June 2016, important steps have been taken to modernise Eurojust's organisational structure. The key principle underlying the reorganisation is a greater focus on the operational needs of the Member States. Eurojust continues to encourage Member States to refer more complex cross-border crime cases to profit from its tailor-made expert advice at an early stage of investigations. To enable Eurojust to keep fulfilling its tasks, Forum members encourage Member States to support efforts to ensure sufficient funding.
8. The Forum takes note of the latest state of play regarding the draft Eurojust Regulation. The European Public Prosecutor's Office will become a privileged partner in the area of crimes against the financial interests of the European Union.

General discussion by Forum members and representatives from EU institutions

In the context of the general discussion, the National Member for Spain at Eurojust addressed the Forum on behalf of the Spanish General Prosecutor to express his deep concern for the situation created by some regional institutions in defiance of the rule of law in Catalonia, which is resulting in undue pressure placed on judges and prosecutors who are strictly performing their constitutional and legal duties.