



Dear reader,

I am pleased to present the eighth issue of Eurojust News.

This issue is devoted to the creation of a European Public Prosecutor's Office. The Lisbon Treaty provides for the possibility of establishing a European Public Prosecutor's Office "from Eurojust" to combat crimes affecting the financial interests of the European Union. The protection of the EU's financial interests requires concerted efforts beyond the abilities of individual Member States, and the establishment of the European Public Prosecutor's Office could be a much-needed response to crimes that cost the European Union an estimated €600 million each year, according to Françoise Le Bail, European Commission Director-General for Justice. This figure is also described as "the tip of the iceberg".

This issue provides insight into the historical context and recent developments towards the establishment of a European Public Prosecutor's Office and outlines the role and initiatives of Eurojust in the fight against financial crime. Key representatives from the EU institutions and academics are interviewed, including Ms Viviane Reding, Vice-President and Commissioner, the Hon. Christine Van Den Wyngaert, Judge at the International Criminal Court, Mr Juan Fernando López Aguilar, MEP and Chair of the LIBE Committee, Mr Hans G. Nilsson, Head of Unit in the General Secretariat of the Council of the EU, and Prof. Dr Dr Jörg Monar of the College of Europe.

If you have any comments concerning this issue of Eurojust News, please contact our Press & PR Service at [info@eurojust.europa.eu](mailto:info@eurojust.europa.eu).

Michèle Coninx, President of Eurojust

## The European Public Prosecutor's Office

### Historical context

#### Corpus Juris

In the mid-1990s, the European Commission tasked a group of experts to draft a corpus juris with the objective of estab-

lishing basic principles for the protection of the financial interests of the European Union. In 1997, the *Corpus Juris* was published and included a proposal to introduce a European Public Prosecutor (Article 18). The publication spawned numerous academic articles, papers, meetings, and opinions.

#### Green Paper and follow-up report of the European Commission

To advance the debate on the European Public Prosecutor, the European Commission published a Green Paper on 11 December 2001 entitled *Criminal law protection of the financial interests of the Community and the establishment of a European Prosecutor*. The Green Paper widened the debate by suggesting several possibilities for the creation of a European Public Prosecutor. It also raised questions among the Member States on the need for a European Public Prosecutor, its institutional set-up and relationship with existing bodies, legal powers, harmonisation of substantive law and rules of procedure.



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EUROJUST

Maanweg 174

NL - 2516 AB The Hague

Tel: +31 70 412 5000

Fax: +31 70 412 5005

[info@eurojust.europa.eu](mailto:info@eurojust.europa.eu)

[www.eurojust.europa.eu](http://www.eurojust.europa.eu)

“... the Council, by means of regulations adopted  
in accordance with a special legislative procedure, may establish  
a European Public Prosecutor’s Office from Eurojust.”

In 2003, a follow-up report to the Green Paper was published, in which the replies to many of the questions posed in the Green Paper were summarised. Member States’ opinions on the need for a European Public Prosecutor were clearly divided. Opinions diverged on the issue of its mandate and organisational structure. However, most Member States did agree that a European Public Prosecutor should be independent, both from Member States and from other European institutions.

*The Lisbon Treaty: Articles 85 and 86 TFEU*

In 2009, the Lisbon Treaty came into force. In Article 85 of the Treaty on the functioning of the European Union (TFEU), an enhanced role for Eurojust, with particular reference to the fight against offences against the financial interests of the Union, is stipulated as follows:

*“...the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust’s structure, operation, field of action and tasks. These tasks may include:*

- (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;*
- (b) the coordination of investigations and prosecutions referred to in point (a);*
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.”*

A legal basis for the creation of a European Public Prosecutor’s Office is provided for in Article 86 TFEU, which describes its mandate as follows:

*“In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor’s Office from Eurojust.”*

*“The European Public Prosecutor’s Office shall be responsible for investigating, prosecuting and bringing to judgement, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union’s financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.”*

From this point on, the debate has moved from theory to priority to step up the effective protection of the financial interests of the European Union. Today’s reflections concentrate on how this new concept of the European Public Prosecutor’s Office could best be implemented and integrated in the current landscape of the European area of freedom, security and justice.

As a member of the group of academics that drafted the *Corpus Juris*, Eurojust News spoke with the Honourable Christine Van Den Wyngaert about her recollections of the earliest stages of the European Public Prosecutor’s Office initiative (see page 3).

*The Stockholm Programme and beyond*

In December 2009, and in accordance with Article 68 TFEU, the Stockholm Programme for the period 2010-2014 was approved by the European Council, focusing on “an open and secure Europe serving and protecting the citizens”. The Stockholm Programme states that the opportunities available to organised crime as a result of a globalised economy and the vulnerability of the financial system need to be systematically reduced. The Stockholm Programme refers to the European Public Prosecutor’s Office under point 3.1.1:

*“In the field of judicial cooperation, the European Council emphasises the need for Member States and Eurojust to implement thoroughly Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, which, together with the Lisbon Treaty, offers an opportunity for the further development of Eurojust in the coming years, including in relation to initiation of investigations and resolving conflicts of competence. On the basis of an assessment of the implementation of this instrument, new possibilities could be considered in accordance with the relevant provisions of the Treaty, including giving further powers to the Eurojust national members, reinforcement of the powers of the College of Eurojust or the setting-up of a European Public Prosecutor.”*

In April 2010, an Action Plan implementing the Stockholm Programme was proposed by the European Commission, stating that it will prepare for the establishment of the European Public Prosecutor’s Office from Eurojust, with the responsibility to investigate, prosecute and bring to judgement offences against the EU’s financial interests.

The European Commission announced that it is working in parallel on a regulation to reform Eurojust and a regulation setting up the European Public Prosecutor’s Office, both proposals to be expected in 2013. ■

## Interview with the Hon. Christine Van Den Wyngaert

### Judge in the Pre-Trial Division of the International Criminal Court

*Eurojust News: You were a member of the drafting team of the Corpus Juris, the historical creation of the European Public Prosecutor's Office concept. What do you recollect of that time?*

**Judge Van Den Wyngaert:** "It must have been some 16 years ago, when numerous notorious fraud cases hit the media. This was amplified by the fact that a number of investigating judges and prosecutors, including Benoît Dejemeppe from Brussels and the Swiss judge Christophe Bernasconi, sounded the alarm because their efforts to engage in trans-border judicial cooperation in the fight against corruption and fraud were frustrated by political interference from above. These were the days when cooperation in criminal matters still went through diplomatic channels, and there were a host of technical and legal obstacles which hindered this cooperation. This alarm was a public outcry for change at a press conference in Geneva, hence it was called the *Appel de Genève*.

Parallel to this, Dr Francesco de Angelis, Director General, DG Budget, in charge of budget payments, was confronted with a day-to-day reality in which the Commission had to release EU funds in situations where there were serious allegations of fraud but nothing could be proven due to lack of adequate judicial cooperation between the authorities of the Member States. There were all sorts of stories in the media about subsidies being paid to farmers who fraudulently claimed entitlements, about VAT carousels and major cases of customs fraud. It was Dr de Angelis, a very driven and charismatic person, who decided to bring a group of academics together to study the extent and nature of the fraud and provide a solution.

Originally, we were eight in this little think tank: Mireille Delmas-Marty (FR), John Spencer (UK), Enrique Bacigalupo (SP), Giovanni Grasso (IT), Klaus Tiedemann (DE), Dionysios Spinellis (EL), Nils Jareborg (SE) and me (BE). We divided the work. Some of us concentrated on problems of substantive law, others on procedure. My own assignment was the mutual legal assistance part, in particular those subjects which had led to the *Appel de Genève*. The study resulting from this project revealed a number of serious shortcomings leading to a situation of *de facto* impunity of serious fraud crimes of which the European Union was the victim.

Meanwhile, the 1995 PIF Convention was published, and other initiatives were being taken. However, Dr de Angelis felt that more could be done and he instructed the same academic think tank to examine whether more radical solutions could be imagined. Naturally, administrative obstacles needed to be removed, and it was clear that, at the very least, magistrates should be able to communicate directly with one another.



Christine Van Den Wyngaert (photo © Eurojust)

At the time, we had horizontal mechanisms such as the European Judicial Network, but that was not enough. Our group of experts thought that the minimum necessary was something like Eurojust. However, we believed that there was a need for a straightforward vertical mechanism, comparable to national prosecution machineries in the Member States. This logically led us to the conclusion that what the European Union needed was a European Public Prosecutor's Office.

We were well aware of the fact that, back in 1997 when we launched the project, we were probably engaging in some kind of political science fiction. We were mindful that, in the short term, there would be little political support for this idea, but at the same time we developed a structure that could possibly work if and when there would be a political willingness to put it into practice. We gave this project the ambitious name of *Corpus Juris*. The project was met with much enthusiasm, not only in academic circles but

also among practitioners. Conferences were held in which academics and practitioners further refined the ideas that had been originally proposed. The European Parliament started to look at the initiative favourably. And then, what materialised was more than we had hoped for: the European Public Prosecutor's Office was mentioned in the Treaty of Lisbon.

The project was and is still quite revolutionary. Naturally, people are resistant to such radical new ideas and initiatives. On the other hand, some criticise it for being too narrow, because we limited ourselves to fraud against the European Union and not to other crimes such as terrorism. This can be explained by the original mandate of the working group, which emanated from DG Budget and was limited to fraud.

However, when 9/11 came and, with it, a sudden preparedness to increase and deepen judicial cooperation within the European Union for terrorism, one science fiction chapter of the *Corpus Juris* was immediately developed and put into practice: the European Arrest Warrant. When we had proposed this in the *Corpus Juris* for fraud, back in 1997, we were met with great scepticism, but by 2001, the idea had been accepted.

Since then, I have been working as an international judge, first at the ICJ and the ICTY, and now at the ICC, and I have been following things only from afar. Although I am not in a position to follow recent developments in detail, I am very pleased to see that progress is being made and that the European Public Prosecutor's Office is now on the political agenda. This is much earlier than I had anticipated in 1997 when the *Corpus Juris* was launched."

*The idea of the European Public Prosecutor's Office has now been incorporated into Article 86 of the Lisbon Treaty.*

"Yes, the idea has room to grow. There is now a new political landscape and we will have to see how it develops."

*If we can take you back in time to the early development of the idea, how did you visualise a European Public Prosecutor's Office: as one person, a group of people ...?*

"We saw this as a pyramid structure, with a centralised European Public Prosecutor and in every Member State a Deputy European Public Prosecutor."

*Was that because of the jurisprudence?*

"It was because we saw that the traditional 'horizontal' structures were defective and because we believed that a more 'vertical' structure would be much more efficient. We proposed to 'Europeanise' the prosecutor but to retain the national judicial systems."

*What about the future of Eurojust?*

"I think that Eurojust should work very closely with the European Public Prosecutor's Office or in fact that Eurojust should be transformed into the European Public Prosecutor's Office. I saw Eurojust as a forerunner of the European Public Prosecutor's Office. It certainly should not operate alongside the European Public Prosecutor's Office, nor do I think that a new institution to superpose Eurojust would be a good idea. They need to work together, even perhaps be joined or merged."

*How do you see the involvement of OLAF, the Commission's Anti-Fraud Office?*

"OLAF should be the 'police service', the investigative arm, detecting fraud and collecting the evidence to be eventually produced in court. Maybe the International Criminal Court could be a source of inspiration: here we have an Office of the Prosecutor consist-

ing of three divisions: Investigations, Prosecutions and Jurisdiction, Complementarity and Cooperation. I see something of this kind at European level, an integration of services, rather than having those offices coexist as separate 'islands' with the unavoidable turf wars as a result."

*What about Europol and the European Court of Justice?*

"I think the European Public Prosecutor's Office should be integrated into one large judicial branch of the European Union. This means that you should also integrate the European Court of Justice, which has become increasingly important in the area of European criminal law and procedure.

Looking at the 1997 *Corpus Juris*, we were indeed not only concerned about prosecution, but also about the rights of the accused. The European Public Prosecutor's Office is a good idea, but it should be developed with due respect for the rights of the accused. I am therefore very happy to see that the European Commission has a roadmap and is very committed to the rights of the defendant, and rightfully so, as one cannot exist without the other.

One of the potential problems that worried me at the time was forum shopping by the prosecutor, i.e. that a European Public Prosecutor's Office could prosecute in a Member State most convenient for the prosecution. I do not know whether that issue has been resolved in the draft legislation that is now being considered. One possible solution that we advocated back in 1999 was a possible role for the European Court of Justice as a sort of preliminary chamber. These ideas came from 1999 and were never developed in any way and I am not really up-to-date with the state of play. One thing is sure: there is much work to do, and that is exciting." ■

"The European Public Prosecutor's Office is a good idea, but it should be developed with due respect for the rights of the accused."

## Interview with Commissioner Viviane Reding

Vice-President of the European Commission and EU Commissioner for Justice, Fundamental Rights and Citizenship



Viviane Reding (photo © European Commission)

“Let’s be clear: if we, the EU, do not protect our federal budget, nobody will do it for us.”

*Eurojust News: First of all, is the European Public Prosecutor really necessary?*

**Commissioner Reding:** “The establishment of a European Public Prosecutor’s Office is called for in the Lisbon Treaty. The logic is simple: if you have a ‘federal budget’ – with money coming from the 27 Member States to promote common European interests – then you also need federal instruments to protect this budget.

Look at how this was developed in the United States: the first case of cross-border crime that the police could prosecute across the borders of the federal states was the evasion of federal taxes. In the end, Al Capone was not arrested because he was the boss of the mafia – he was put behind bars for crimes against the US federal budget, evading customs and other taxes.

The effective protection of the EU’s financial interests is of great political and economic relevance, particularly now that many Member States face an economic downturn. Each year, substantial amounts of taxpayers’ money managed in and by the Member States fall prey to criminal activities. For example, in 2010, Member States reported irregularities totalling €2 billion, of which €600 million involved suspected fraud cases.

A European Public Prosecutor’s Office will ensure that investigations and prosecutions to protect the European Union’s financial interests are effective and synchronised throughout the Member States. This is not the situation today. Many cases are not prosecuted at all and criminals exploit legal loopholes to pocket citizens’ money. We have to change this and focus on the protec-

tion of the EU’s financial interests. The European Public Prosecutor will be responsible for investigating, prosecuting and bringing to judgement perpetrators and accomplices who have committed offences only against the EU’s financial interests.

Let’s be clear: if we, the EU, do not protect our federal budget, nobody will do it for us.”

*Everyone is talking about the financial interests of the European Union. How do you define these?*

“It is very simple: protecting the financial interests of the European Union means combating the misuse of EU funds for criminal purposes. This puts the EU’s work in generating the conditions for jobs and growth and improving living conditions at stake. With public finances under pressure throughout the European Union, every euro counts. The European Commission has therefore proposed new rules to fight fraud against the EU budget by means of criminal law to better safeguard taxpayers’ money.

The offences we mean to tackle are fraud, or other fraud-related crimes such as corruption, the misappropriation of funds, money laundering and obstruction of public procurement procedures to the detriment of the EU budget. Unfortunately, today, we still witness far too many illegal activities that lead to losses to the EU budget. Criminals deliberately provide false information to receive EU funding for agricultural or regional development, or national officials accept money in return for awarding a public contract, in breach of procurement rules. We have to do more to combat this.”

*What role should Eurojust play in the European Public Prosecutor’s Office?*

“It is good that we already have a starting point for the European Public Prosecutor’s Office, as Eurojust in The Hague

has already established very useful cooperation among national prosecutors on which we can build. Various options can be envisaged. At this stage, one principle should guide us: the European Public Prosecutor will be an independent office, but its independence will not deprive it from building upon existing resources and creating synergies. As the Treaty of Lisbon makes clear, the European Public Prosecutor will come from Eurojust, so the relationship between both these bodies will need to be looked at very closely.”

*Some Member States have shown resistance to the establishment of the European Public Prosecutor's Office. Do you think that this resistance can be overcome?*

“We did not start talking about the creation of a European Public Prosecutor's Office yesterday, or even last year. The reflections and discussions started a long time ago, almost 20 years ago. We know that some may see a glass half empty where others see it half full. That is normal in Europe. What I want is that more practitioners and ministerial officials realise that the European Public Prosecutor's Office is a question of necessity. Take, for instance, Spain, Italy and France, which have called for the European Public Prosecutor's Office, because they see it as the best way to ensure more efficient prosecution and protection of the financial interests of the European Union.

The 2011 OLAF report showed that there is a considerable disparity in conviction rates across Member States for offences against the EU budget (from 14% to 80%). The reasons vary: from lack of resources and/or expertise to lack of ownership and low priority. This is where the European Public Prosecutor's Office could really add value: one office which is responsible for investigating, prosecuting and bringing to judgement crimes affecting the financial interests of the European Union – one office that would prosecute these offences in a systematic and uniform way throughout all Member States.

I am sure that many more officials will share this vision during the course of

our discussions, particularly on the architecture of the European Public Prosecutor's Office and the relationship between the European Public Prosecutor's Office and national authorities.”

*How do you see the future of Eurojust?*

“In 2012, we celebrated Eurojust's tenth anniversary. This occasion gave us the opportunity to look back and see the areas where we need further reforms. I think we must make Eurojust's structure more efficient to en-

sure that National Members can focus on casework rather than administrative work. The present division of administrative tasks risks duplication of functions, blurred responsibilities and inefficiency. Eurojust National Members' central task must be to coordinate prosecutions in the fight against serious and organised crime. We must also put in place arrangements to involve the European Parliament in the evaluation of Eurojust's activities. I am confident that these reforms will prepare Eurojust for the next decade.” ■

## The role of Eurojust

**E**urojust supports and strengthens coordination and cooperation between national investigation and prosecution authorities of the Member States when dealing with serious cross-border crime cases by, *inter alia*, facilitating the execution of mutual legal assistance, the application of judicial cooperation instruments and decision-making regarding conflicts of jurisdiction. The casework of Eurojust reflects the EU crime priorities, such as terrorism, drug trafficking, trafficking in human beings, fraud, corruption, cybercrime, money laundering, organised crime and illegal immigration, as well as other criminal offences affecting the EU's financial interests. While the so-called PIF offences (*Protection des Intérêts Financier*) do not represent the majority of Eurojust's caseload, Eurojust is today the only key player at European judicial level fighting against such crimes.

### *Cases affecting the financial interests of the European Union*

In 2012, 27 PIF cases were referred to Eurojust (5 of which involved OLAF). Eurojust deals with cases that concern fraud (382 cases in 2012), including VAT fraud and, specifically, VAT carousel fraud, and any other criminal offences affecting the EU's financial interests, such as corruption (30 cases in 2012) and money laundering (144 cases in 2012). Difficulties in gathering reliable statistics in the area of PIF

offences are encountered mainly due to the lack of a clear definition of a PIF offence at EU level. *The Directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law* (PIF Directive) should eventually clarify, once adopted, the scope and meaning of a PIF offence.

### *Legal and practical challenges*

Legal obstacles arise as a result of differences between the 30 existing legal systems in the European Union. The Lisbon Treaty reaffirms the principle of mutual recognition and the corresponding need for mutual trust. National investigation and prosecution authorities of the Member States face different rules, for example on the admissibility of evidence and disclosure obligations as well as different procedures, such as house searches and the taking of witness statements, and disparities in relation to data retention rules. Practical issues emerge in the execution of mutual legal assistance requests as a consequence of simultaneous transmission of requests through different channels, translation needs, lack of centralised databases and lengthy execution procedures in some Member States. Upon request of the competent national authorities, Eurojust supports the execution of mutual legal assistance requests by assisting in the drafting of such requests, identifying and transmitting the requests to the appropriate national authorities and advising on the

evidential requirements in the requesting and requested countries.

### *Facilitating coordination and cooperation*

Eurojust plays a significant role in facilitating the application of mutual recognition instruments such as the European Arrest Warrant and assists in the timely execution of European Arrest Warrants by facilitating the dialogue between issuing and executing Member States and providing advice to help clarify the definition of crimes in the jurisdictions involved. In the prevention and resolution of conflicts of jurisdiction, Eurojust can also play a mediating role and provide advice in cases where transfers of proceedings are needed.

Moreover, Eurojust assists in the setting up of Joint Investigation Teams (JITs) and actively participates in the activities of JITs through its College Members. JITs are composed of judicial and police authorities of the Member States, set up on the basis of an agreement, and operating as a team. With the JIT Funding Project, launched in 2009, Eurojust administers European Commission funding of JITs, e.g. reimbursement of costs for travel, accommodation, translations, laptops, etc. JIT funding is vital to cover some of the costs incurred by JIT operations, especially for those countries with fewer resources, and ensures joint action between competent national authorities of the Member States.

### *New opportunities in light of the Lisbon Treaty*

With the entry into force of the Lisbon Treaty, the European area of freedom, security and justice is moving towards a new phase, providing in Article 86 TFEU for the possibility to set up a European Public Prosecutor's Office "from Eurojust". At the same time, Article 85 TFEU foresees a strengthened role for Eurojust, i.e. in the initiation of criminal investigations and the resolution of conflicts of jurisdiction, particularly when dealing with PIF offences. Hence, both provisions must be considered as an integrated concept in terms of

future developments in the landscape of EU criminal matters. The European Public Prosecutor's Office as the new player in this field will become part of a coherent system, pursuing a common goal where the functioning of all EU Justice and Home Affairs actors, Eurojust in particular, but also others, such as OLAF, Europol and the European Judicial Network, is well coordinated. Strengthening ties between the European Public Prosecutor's Office and the competent national authorities in the Member States will be one of the major challenges to be faced and will determine future success, as cases will be heard by national courts.

### *Need for cohesion and complementarity*

The competence of a future European Public Prosecutor's Office will presumably be limited to PIF offences, meaning that the investigation and prosecution of connected crimes will need to be ensured. A crime of fraud affecting the EU's financial interests, for example, may be linked to money laundering, drug trafficking, or other forms of organised crime within the competence

of Eurojust. Coordination will be necessary to avoid the risk that prosecution of connected crimes encounters the impediment of the *ne bis in idem* principle or impunity gaps by neglecting these connected crimes. In such scenarios, Eurojust will play a significant role in coordinating the efforts of the European Public Prosecutor's Office and the competent national authorities. Further, Eurojust will play an important role if the European Public Prosecutor's Office is created by enhanced cooperation with a minimum of nine Member States. Thus, Eurojust would play, *inter alia*, a pivotal role in enhancing and facilitating judicial cooperation and coordination between the European Public Prosecutor's Office and the national judicial authorities of the Member States not involved in such enhanced cooperation.

In the context of the creation of a European Public Prosecutor's Office, and the reform of Eurojust in light of the Lisbon Treaty, the European Commission has conducted several consultations with Eurojust, and Eurojust has also taken the initiative to develop ideas and look into possible synergies. ■

## Eurojust initiatives

**E**urojust has taken a proactive stance in its future development. Its contributions are based on the operational experience acquired by the College of Eurojust since its establishment in 2002. The Council Decision of 2009 on the strengthening of Eurojust and the Lisbon Treaty have hugely impacted the future work programmes of Eurojust, and the organisation has responded to the challenges and potential pitfalls with a series of initiatives focused on addressing key issues of concern both to Eurojust and to other actors in this evolving debate.

### *Task Force on the Future of Eurojust*

In December 2009, the Task Force on the Future of Eurojust (Task Force) was established by a decision of the College of Eurojust. The objective of the Task Force is to reflect on the future devel-

opment of Eurojust and the prospect of a European Public Prosecutor's Office "from Eurojust". The Task Force further contributes to fulfilling the mandate of the Standing Committee on operational cooperation on internal security (COSI), which was established by Article 71 TFEU and implemented on 25 February 2010 by Council Decision 2010/131/EU. The objective of COSI is to facilitate, promote and strengthen the operational cooperation of the relevant national authorities of the Member States of the European Union in the field of internal security to play an active role in interagency cooperation.

### *Eurojust strategic seminars and other meetings*

Further to Eurojust's internal discussions and brainstorming sessions, initiatives were sought under the EU



Eurojust strategic seminar in Bruges, September 2010 (photo © Eurojust)

Presidencies, with the EU institutions, i.e. the European Commission, the Council and the European Parliament, partners, especially OLAF and Europol, academics and practitioners, to exchange views on the future perspective of a European Public Prosecutor's Office.

**Bruges seminar.** In September 2010, Eurojust and the Belgian Presidency held a strategic seminar in Bruges entitled *Eurojust and the Lisbon Treaty: Towards more effective action*. The seminar was devoted to the future development of Eurojust under the Lisbon Treaty. During two days of discussions, practitioners, academics and experts had the opportunity to discuss the possibility to adopt a new regulation on Eurojust and the anticipated establishment of a European Public Prosecutor's Office from Eurojust. Participants examined the structure and institutional development of Eurojust, its operational powers and its relations with national authorities, the resolution of conflicts of jurisdiction and operational cooperation with relevant partners, such as the European Judicial Network, Europol and OLAF. The establishment of a European Public Prosecutor's Office and its relationship with Eurojust, as well as competences and rules of procedure, the admissibility of evidence and judicial review, were also discussed.

General conclusions stressed the ambiguities inherent in the wording of Articles 85 and 86 TFEU and highlighted a

number of questions of a legal, procedural and institutional nature. The need for the full implementation of the revised Eurojust Decision and the strengthening of Eurojust's partnerships with the European Judicial Network, OLAF and Europol were endorsed. Looking to the future, the initiatives on the reform of Eurojust and the creation of a European Public Prosecutor's Office were considered, using a parallel/complementary approach or a step-by-step approach, and the need for continuing discussions on future developments in light of the Lisbon Treaty under the EU Presidencies was underlined.

The report of this seminar was published as a Council document on 9 December 2010 and is available on the Eurojust website.

**Budapest seminar.** As a follow-up to the Bruges seminar, Eurojust and the Hungarian EU Presidency held a strategic seminar in Budapest in May 2011, entitled *Eurojust: New Perspectives in Judicial Cooperation*. The objective of this seminar was to reflect on the future of Eurojust in light of Article 85 TFEU and to identify areas and input for consideration in the development of a future regulation on Eurojust. The discussions regarding the possibility for Eurojust to initiate investigations and resolve conflicts of jurisdiction followed an evidence-based approach to improving judicial coordination and cooperation in criminal matters. The seminar also focused on strengthening links between Eurojust and its EU partners, such as Europol and OLAF, with a view to ensuring a consistent and integrated methodology within the European area of freedom, security and justice.

Mr Péter Jozsef Csonka, Justice and Home Affairs Coordinator, Permanent Representation of Hungary to the EU, provided the conclusions to the seminar. He remarked that a parallel approach, constituting a reinforcement of Eurojust under Article 85 TFEU and a simultaneous consideration of Article 86 TFEU on the European Public Prosecutor's Office, rather than a step-by-step approach, is the prevailing preference in the discussions. Mr Csonka explained that Article 85 "now offers concrete possibilities to transform Eurojust from a simple mediator and player at horizontal cooperation level



Eurojust strategic seminar in Budapest, May 2011 (photo © Eurojust)





Eurojust-ERA conference in The Hague, November 2012 (photo © Eurojust)

to a player with binding operational powers at vertical integration level". An increase in Eurojust's powers would entail an increase in its responsibilities and accountability to the European Parliament and national parliaments.

**A Blueprint for the European Public Prosecutor's Office - EU model rules of criminal procedure.** In June 2012, a two-day conference was held in Luxembourg on the model rules of criminal procedure for a European Public Prosecutor's Office. During this conference, the results of a two-year research project coordinated by Prof. Dr Katalin Ligeti of the University of Luxembourg to "elaborate a set of rules with a model character delineating the investigative and prosecutorial powers of an EPPO, the applicable procedural safeguards and the evidential standards" were presented.

Mr Robert Badinter, former President of the Constitutional Council of France, provided the concluding remarks and perspectives. He argued in favour of setting up a genuine European criminal justice system, which includes the setting up of the European Public Prosecutor's Office to protect the EU's financial interests, and a common legal and judicial culture based on philosophy, religion and Roman law. He considered the transformation of Eurojust into the European Public Prosecutor's Office, utilising the principle of enhanced cooperation, to be necessary.

**Eurojust-ERA conference.** The conference, *10 Years of Eurojust: Operational Achievements and Future Challenges*, organised by Eurojust with the support of the Academy of European Law (ERA), was held in The Hague on 12 and 13 November 2012. For the first time, a Eurojust event was also open to the general public. Judicial authorities, ministry officials, representatives of EU institutions, academics, and past and present Eurojust National Members attended the conference. The goal of the conference was to celebrate Eurojust's achievements ten years after its establishment and to discuss Eurojust's future challenges, particularly in view of the European Commission's proposals for regulations on Eurojust and on the establishment of a European Public Prosecutor's Office, both expected in 2013.

Eurojust's operational work and perspectives under the Lisbon Treaty were discussed, taking into account the status and powers of the National Members and the College; coordination and initiation through Eurojust; Eurojust's role in conflicts of jurisdiction and judicial cooperation instruments; and the role of Eurojust in supporting JITs from beginning to end. Another central theme was the gathering and exchange of information and the present and future role of the Eurojust National Coordination System (ENCS). Access to documents, dealing with confidentiality issues, and finding the right balance

between the use of information and data protection, were also reflected upon. The relationship of Eurojust with EU institutions (particularly the European Parliament), the European Judicial Network, EU agencies and bodies such as Europol and OLAF, and third States and international organisations, was another topic. The conference concluded with contributions on the restructuring of Eurojust with a view to improving Eurojust's structure and judicial control.

Following the conclusion of the Eurojust-ERA conference, three of the invited speakers, Mr Juan Fernando López Aguilar, Prof. Dr Jörg Monar and Mr Hans G. Nilsson, kindly consented to be interviewed for this publication (see pp. 10-15).

**Workshop on the proposed European Public Prosecutor's Office.** Eurojust and the Irish EU Presidency held a workshop on the European Public Prosecutor's Office in April 2013. The idea of the workshop was to encourage the sharing of views and proposals among judicial practitioners on the practical operation of the European Public Prosecutor's Office at national level as well as in relation to Eurojust. National experts, Eurojust National Members and representatives from the EU institutions and partners such as OLAF and Europol participated in the workshop.

On the basis of a case example, discussions dealt with the assessment of a life cycle of a future European Public Prosecutor's Office case and how it could work in practice. To this end the different phases of a case, from initial information gathering and exchange, the initiation of investigation and the investigation phase leading to prosecution and trial, were looked at and debated. Key elements for effective law enforcement avoiding impunity gaps, and for the conviction of perpetrators, such as the gathering and admissibility of evidence and practical cooperation with Member States not participating in a future European Public Prosecutor's Office, and cooperation with third States, were considered. ■

## Interview with Mr Juan Fernando López Aguilar

Member of the European Parliament and Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE Committee)



Juan Fernando López Aguilar (photo © Eurojust)

“I am personally convinced that Eurojust, not OLAF, is the embryo of the European Public Prosecutor’s Office that we need.”

*Eurojust News: First of all, is the European Public Prosecutor’s Office really necessary?*

**M**r López Aguilar: “I have always been personally convinced, as a legal thinker, as a professor of European law, as a Minister of Justice. Now, as Chair of the LIBE Committee, I play my institutional role, which is opening the floor for debate. But I am personally convinced that this is the way to go, otherwise we are not going to be able to strike the proper balance between liberties and security.

I never lose sight that security is a fundamental right itself, and one of the duties of the European institutions is to provide security to EU citizens against serious trans-border crime.

The only way to do this is with an institution on a European scale.”

*You have said that the Lisbon Treaty is quite a revolution in the European area of freedom, security and justice. How do you see a future European Public Prosecutor’s Office being established?*

“It’s a major step that it’s found in the Lisbon Treaty. And it’s a major step that we have an Article 86 providing the way for it to be established and set in motion, not only involving the ordinary legislative procedure, but also through enhanced cooperation by nine Member States that are ready to go forward. That is my wish.

I want it to happen because we urgently need this development to be able to

deal with trans-border serious crime, not just to deal with the protection of the financial interests of the European Union through a common definition of criminal offences and the common establishment of criminal sanctions. By doing so, we, the criminal lawmakers, are asserting ourselves. That is a major step, but it is not enough. We need an institution to enforce criminal lawmaking. And that institution is the European Public Prosecutor’s Office.”

*Everyone is talking about the financial interests of the European Union. How do you define the term ‘financial interests of the European Union’ and how could they be effectively protected?*

“This is a long process. It starts with the EU institutions, which are protecting the taxpayers’ money, securing the financial interests of the European Union through the resources lent to the EU institutions to carry out their tasks, including customs duties, VAT, and, of course, the EU share of the national income of the Member States. We need more resources, but we also need to look after and properly use every single euro. We must enhance the administrative capacity of OLAF in combating fraud, but we also need to define, through common minimum standards, criminal offenses against the proper adjudication and administration of the taxpayers’ money by the European institutions, and with criminal sanctions against those who break the law.”

*You mentioned several times your support for the role of Eurojust. What role should Eurojust play in the European Public Prosecutor’s Office?*

“I am personally convinced that Eurojust, not OLAF, is the embryo of the European Public Prosecutor’s Office that we need. We need an institution that is capable of making judges, public prosecutors and law enforcement agencies, including police departments of the

Member States, (1) work together in a cooperative fashion, (2) investigate suspected crimes, (3) identify those responsible for those crimes, and (4) bring them to trial in the Member States insofar as we have not developed a European judicial architecture of our own. That is a federal pattern; we have seen it happen for centuries in the USA. Why shouldn't we expect that at some time in the future a European judicial architecture should become a reality for the benefit of the European citizens?"

*You said in your contribution here today that you have encountered resistance from some Member States. Do you think that we can overcome this resistance?*

"Yes. Not only because enhanced cooperation is necessary, but because we need it urgently. Otherwise, there is no way we can face the criminality of the twenty-first century. Petty domestic crimes can be dealt with by the single capacities of the individual Member States.

*You said in your presentation that the European Parliament will now be the EU criminal lawmaker. What role will the European Public Prosecutor's Office play, and what role will the European Parliament play in the development of the European Public Prosecutor's Office?*

"In Article 83 TFEU, the role of the European Parliament is foreseen. European legislation is expected to define terrorism, THB, child abuse, child pornography, money laundering, corruption, drug trafficking, arms trafficking, and all sorts of mafia-type crimes, to be dealt with via trans-national instruments. The ultimate expression of that need shall be the European Public Prosecutor's Office."

*Finally, what do you see as the result of this Eurojust-ERA conference?*

"It is OK that we gather and discuss. It is about time that we do this on a regular basis. I underline the importance of Ms Coninx coming on a regular basis to the LIBE Committee to exchange views, and I find it of use to be here at a Eurojust conference representing the LIBE Committee." ■

## Interview with Mr Hans G. Nilsson

### Head of Unit, Fundamental Rights & Criminal Justice, General Secretariat of the Council of the EU

*Eurojust News: You were one of the 'founding fathers' of Eurojust. You mentioned that at the time of its founding, there was already a vision of the European Public Prosecutor's Office. Can you explain?*

**M**r Nilsson: "Yes, in fact, five years before, when we started to discuss the conclusions of the Tampere European Council, a group of academics looked at the question of setting up some form of European Public Prosecutor's Office, at that time not as an Office but as a person as European Public Prosecutor. Seven renowned European judges and prosecutors drafted an appeal, the so-called *Appel de Genève*, a set of rules on substantive and criminal law." [The *Corpus Juris*, a project headed by Mireille Delmas Marty and John Vervaele in 1997, may be seen as a response to that *Appel*.]

*You also said that, from the beginning, a connection already existed between Eurojust and the European Public Prosecutor's Office.*

"Yes, since we tried to set up Eurojust in 1996, the Member States were not ready. Then, in 1999, they were ready, during the Tampere European Council. At that time, discussions on the European Public Prosecutor's Office were already underway."

*A European Public Prosecutor – is it really necessary? We have the national authorities fighting crime.*

"I am struck by some of the statistics presented by OLAF. Namely, in some Member States, 20% of OLAF's reports lead to cases and criminal convictions, whereas in other Member States, the rate is about 90%. The average is apparently around 46%. Some might pose the question – what is the reason for that? But I think that, in some Member States at least, they are not really taking protection of the financial interests of the EU as seriously as when they deal with



Hans G. Nilsson (photo © Eurojust)

national fraud and national criminal cases. I believe there is a need to take a step further at this time.”

*The wording of Article 86 TFEU, the creation of a European Public Prosecutor's Office 'from Eurojust', is very vague. Some speakers say that this wording is intentional. How, with your background and experience, do you see this issue? Will the European Public Prosecutor's Office be a separate institution, will it be embedded in Eurojust, or will the European Public Prosecutor's Office be Eurojust itself?*

“There is no doubt in my mind that the European Public Prosecutor's Office must be a completely independent office. That does not mean that the European Public Prosecutor's Office cannot become a part of Eurojust as well because, of course, fraud will not be limited to the Member States participating in Eurojust. The crimes will also spill over into those Member States that are not part of the European Public Prosecutor's Office.”

*We had the initial Council Decision on Eurojust and its revision in 2009, and now we are awaiting a proposal for a new regulation from the European Commission. Will this be sufficient for Eurojust? Is Eurojust still important?*

“Eurojust will be important in all other cases and they are by far a huge major-

ity, probably 95% of cases that are not dealing with the protection of the financial interests of the EU, so Eurojust will for decades and decades into the future have a *raison d'être*. And Eurojust needs to be developed as well. You cannot have a weaker Eurojust in relation to very serious crimes when, at the same time, you have a stronger European Public Prosecutor's Office in relation to fraud against the financial interests of the EU. This imbalance can create problems in relation to issues in the future, because the criminals may be able to use this imbalance, and, of course, the criminals will not organise themselves in the way we have organised ourselves. We also need to be stronger when dealing with other serious organised crimes. Probably in many of the more serious cases of EU fraud, criminal organisations will also be involved in other types of crimes, so we need a stronger Eurojust there as well.”

*What exactly is the meaning of the 'financial interests of the EU'?*

“This issue is exactly what we are currently negotiating in the Council, the so-called PIF Directive. There will be offen-

ces connected to the PIF Directive – such as money laundering and euro counterfeiting. And then other questions will be about the other crimes used to commit PIF offences, such as forgery of documents. Will these related crimes also be able to be prosecuted? I think so, because otherwise it will be very strange to separate them out and not give that competence as long as there is a strong connection with PIF offences.”

*Many questions and problems remain. How do you see the future of Eurojust and the new PIF Directive?*

“I hope to see a package from the European Commission within the next half-year or so, and that they will take the proposal not only on the European Public Prosecutor's Office but also in relation to Eurojust, with a view to strengthening Eurojust further and also to setting up the European Public Prosecutor's Office and to decide, or to propose, at least, to the European Parliament and the Council how these issues will be solved in the future. We cannot take half-measures. This issue is too important to be half-made, and I think the Commission is well aware of that.” ■

## Interview with Prof. Dr Dr Jörg Monar

Director of European Political and Administrative Studies, College of Europe, Bruges, Belgium

*Eurojust News: In your speech to the conference, you mentioned the important role of Jean Monnet. How do you see this role?*

**P**rof. Dr Dr Monar: “Jean Monnet, one of the founding fathers of our European Union of today, was convinced that institutions play a crucial role in ensuring that there is a European logic of action, a European identification of needs and European responses to common challenges. He

believed in institutions being created to ensure that there is, at European level, a different ‘common’ perspective and different logic of action from that of the Member States. I referred to Monnet [in my introduction to the conference this morning] because I believe that this rationale has vindicated itself in the case of Eurojust, which remains the only institution at European level that ensures that, in complex cases of cross-border prosecution, there is a European logic

of action and the possibility for an effective coordination of European criminal justice needs. I would say that the creation of institutions can make a major difference in moving beyond a purely Member State-based logic of action – and the creation of Eurojust has marked a major step in this direction in the EU's area of criminal justice.”

*In that regard, Eurojust, as said by several speakers, is unique.*

“Absolutely; I am not aware of any other example in the world of a cross-border prosecution institution having been created where countries that remain sovereign in terms of criminal justice can receive extensive advice, coordination support and even initiatives on all aspects of cross-border prosecution cases, and are constantly encouraged to develop more effective mechanisms of cooperation in order to respond to common criminal justice challenges.”

*Some speakers and some MEPs have said that Eurojust is not working to its full capacity. Nevertheless, Eurojust opened 1,533 new cases last year.*

“Actually, the President, Michèle Coninx, mentioned that one can see in the growing number of cases over the years that national prosecution authorities appreciate the added value of Eurojust, and that Eurojust is recognised as playing a beneficial role. Eurojust is an institution that started 10 years ago on a relatively modest scale and has now really become an institution that is seen as an interlocutor and a potential agent of help.

The main added value of Eurojust comes to the fore when national prosecution authorities encounter specific problems which risk them not being effective in the investigation or pros-

ecution of serious cross-border crime. Such a risk of lack of effectiveness is a challenge for Europe as a whole and a threat to European citizens. We should never forget that, ultimately, Eurojust is serving European citizens by ensuring that justice is done and effective action is taken against serious cross-border crime. Justice and security are fundamental public rights. Although Eurojust sometimes appears to be merely fulfilling certain technical functions, we should not forget that Eurojust serves the fundamental objectives of security and justice in Europe.”

*We had several steps. We started with the Tampere European Council in 1999, the initial Council Decision on Eurojust and its revision in 2009, and we are now expecting a new regulation. We also have the Lisbon Treaty and the famous Article 86. Is the European Public Prosecutor’s Office necessary?*

“One can certainly make a strong case for the European Public Prosecutor’s Office in a longer-term perspective. Certain forms of crime are best prosecuted at European level. We have seen this historically in the USA as well, where a system of federal justice with defined federal crimes was gradually developed, because of the realisation that central prosecution is the only effective way to achieve success. Howev-

er, we must be aware that in the European Union we are still rather far away from a federal system like the USA. Establishing a European criminal justice code and criminal procedure law, a European equivalent of the US Federal Bureau of Investigation, would demand a rather different constitutional and political system for the European Union.

The European Public Prosecutor’s Office is in principle a sensible project, but I still see considerable political and legal difficulties in establishing it and making it work effectively. As long as we have all these difficulties, which may still need many years to be overcome, my view is that Eurojust should continue to develop and be strengthened further, as it is an institution that has proven its value. Eurojust’s primary task is coordinating national prosecution authorities – and not the exercise of a central ‘command and control’ function. Eurojust is an institution that fits much better into the current constitutional design of the European Union, which is still based very much on national sovereignty in the criminal justice and law enforcement fields. This does not exclude thinking about the European Public Prosecutor’s Office, and considering its realisation at first for the very specific task of the protection of the financial interests of the European Union. But what I am a bit concerned about is that Article 86 could overshadow and reduce the possibilities for Eurojust to achieve its full potential. As you know, Article 85 also offers possibilities in this latter regard. It would be a negative development if we were to now focus on the establishment of an as yet untested and still rather controversial European Public Prosecutor’s Office and therefore neglect the further positive potential of Eurojust.”

*As you said, would the fact that Eurojust already exists be the solution for sceptical Member States that are reluctant to approve the European Public Prosecutor’s Office?*

“Yes. One thing is very clear. The European Public Prosecutor’s Office will not be implemented by all Member



States, as some national governments are not merely sceptical, but opposed to this realisation. So if this European Public Prosecutor's Office sees the light of day, it will be only with a much reduced number of Member States. Enhanced cooperation will clearly need to be applied, and, although this is still difficult to predict, initially probably with not much more than half of the Member States.

So, the European Public Prosecutor's Office might see the light of day with a relatively limited remit, initially focused only on the financial interests of the European Union, and with a relatively limited number of Member States. All this means that it would not in any way replace Eurojust. I would therefore say, given the obvious initial limitations of the European Public Prosecutor's Office, let us invest sufficient political capital and political will of action into the further development of Eurojust."

*What exactly does one mean by the term 'the financial interests of the EU'? Is this term purposely very vague?*

"The term surely lacks a more precise definition. However, there is a basic common understanding, especially in the current climate of the financial crisis and cuts to national budgets. One needs to act effectively to fight fraud against the financial interests of the European Union and lessen the risk that criminal organisations operating across borders use EU funds for illicit ends. The loss of financial means, which could otherwise be invested in line with the EU's objectives, and also the level of fraud against the EU budget, undermines the credibility of EU policies, especially as you have in some Member States the question of whether the EU's budget should not be reduced rather than increased. There is a need to show that the EU can protect itself effectively against this type of fraud."

"We must be aware that in the EU we are still rather far away from a federal system like the USA."

*You said that the European Public Prosecutor's Office is open for political debate. What do you mean by this statement – the different opinions of the Member States or the Council?*

"Well, you obviously have, especially with regard to Article 86, strongly divergent views among the Member States' governments represented in the Council of the desirability and feasibility of the European Public Prosecutor's Office. Ultimately, we are encountering some fundamental reluctance, especially in some Member States, to engage in steps that might eventually lead to a sort of federal criminal justice system that would interfere with national sovereignty and national legal traditions. In some Member States, this fear is quite clearly very prominent."

*How do you interpret the Article 86 expression, 'from Eurojust' – as a new organisation or something embedded in Eurojust?*

"First of all, one has to say that the formulation of the expression 'from Eurojust' is, of course, extremely vague in the Lisbon Treaty, and probably it is extremely vague on purpose, because there was no consensus among the Member States during the drafting process. As has happened often in the European integration process, something is put into the treaties in a rather vague way to keep all options open.

Personally, I think that if the European Public Prosecutor's Office is created, it will have its own distinct mandate and its own distinct competences, which means that it will be a separate organisation in terms of its mandate. This situation does not exclude the possibility that, for instance, Eurojust and the European Public Prosecutor's Office could share, to some extent, part of the same administration, or even be located in the same building. But, ultimately, I think the intention is to have a separate entity. Perhaps the European Public

Prosecutor's Office will initially be fully embedded in Eurojust and then gradually develop its own standing separate from Eurojust. But one thing I am very sure about is that I do not envision the European Public Prosecutor's Office, if and when it sees the light of day (and this may take several more years), replacing Eurojust because the mandate of the European Public Prosecutor's Office is much more specific. It will have more 'hard' powers than Eurojust, but limited to certain fields and specific functions. Some functions of Eurojust are clearly not covered by Article 86, for instance the coordination of national prosecution services. There will be a continuing need for coordination because the European Public Prosecutor's Office will not have competence, at least initially, for dealing with serious forms of cross-border crime not affecting the financial interests of the European Union.

So a European coordination of national prosecution authorities will continue to be needed, and Eurojust provides it. And we should do everything possible to strengthen this coordination role. Also, in cases of conflict of jurisdiction, Eurojust has a valuable role to fulfil, and Article 86 does not refer to this function. So, I am fully convinced that Eurojust's role and existence are not and should not be threatened by the establishment of the European Public Prosecutor's Office."

*If one day this European Public Prosecutor's Office is established, then what will be the judicial follow-up? Imagine there is a case against one or more Member States (e.g. VAT fraud). What court, and what legislation, will play a role?*

"This question belongs to the huge range of questions that currently have no response at political level. I refer to the European Public Prosecutor's Office as a sort of criminal justice 'bombshell' built into the Lisbon Treaty in terms of all the implications it might have in rethinking the relationship between the prosecution authorities at EU level and all the national prosecution authorities, because you have a step towards a hierarchical institution and that means you need to also considerably rethink

the architecture of prosecution in the Member States. You would need to look at revising certain fundamental procedures among others. The consequences are enormous. I am not saying that it is not possible, but it will have huge implications that will add to the difficulties of putting it into place.”

*You gave the example of the USA. Do you see that, one day, there will be such legislation leading to the establishment of a European form of the Federal Bureau of Investigation or another investigative police force?*

“This is, of course, a question that goes very far into the future, but I think one should not exclude an evolution in this direction. We have some real internal security and justice challenges in Europe that would best be tackled by more powers at European level. But this cannot be envisaged without a further evolution of the EU’s political and constitutional system.

European citizens, especially, will need to be convinced and have a different feeling of legitimacy and expectation with regard to the European

Union, and this is something that will take quite a bit of time to achieve. On the other hand, when I first started to work on Justice and Home Affairs at European level in the 1990s, the few people who were already envisaging a European Arrest Warrant thought that this might take decades, and then we rather rapidly saw agreement on that instrument in 2002. Of course, I am not implying that we need another 9/11 terrorist attack to drive the process forward, but sometimes things can move much faster than one first thinks possible.” ■

## The way ahead

### *Commission Work Programme 2013*

In its Work Programme 2013, the European Commission sets out its forthcoming initiatives for 2013-2014. The initiative for the establishment of the European Public Prosecutor’s Office is to set the framework and conditions for its creation, focusing on the protection of the financial interests of the European Union. The initiative addresses the obstacles in the fight against crimes affecting the financial interests of the European Union. The obstacles stem from the fragmentation of criminal law and procedures in Member States, where definitions and sanctions vary. The initiative will further seek to ensure that Member States attach a high priority to investigating and prosecuting offences affecting the EU’s financial interests and commit the resources necessary.

The main policy objectives are to make the fight against offences affecting the financial interests of the European Union more effective and to enhance the equivalent protection of taxpayers’ money across the European Union. To successfully achieve these objectives, better implementation of existing policies in judicial cooperation is also required.

The first proposed action of the European Commission is to harmonise and strengthen protection against fraud by criminal law through (1) setting

### EPPO workshop co-organised by Eurojust and the Consultative Forum

The Consultative Forum brings together Prosecutors General and Directors of Public Prosecution Services of the Member States for the purpose of reinforcing the judicial dimension of the EU strategy for internal security by promoting the active involvement of national prosecutorial authorities, and contributes to the legislative initiatives to be taken at EU level on the basis of practical judicial experience.

At its meeting in April 2013, convened by the Irish EU Presidency with the support of Eurojust, the Consultative Forum discussed the conclusions of a workshop, “The proposed European Public Prosecutor’s Office: How will it work in practice?” which was a co-organised initiative.

The workshop focused on key aspects relating to the operation of the European Public Prosecutor’s Office at national level as well as in relation to Eurojust. On the basis of a case example, national practitioners and Eurojust College Members shared views and proposals on the way a future European Public Prosecutor’s Office would handle a case from its preliminary phase, through the initiation of investigations and then towards prosecution and trial. Substantial questions related to the gathering and admissibility of evidence and cooperation with Member States not participating in the enhanced cooperation in the form of a European Public Prosecutor’s Office, and with third States, were addressed.

Participants discussed the crucial importance of establishing clear rules for the European Public Prosecutor’s Office on its competence and powers to act, on the judicial review of its decisions, and on its institutional accountability. The fundamental principle of independence of the European Public Prosecutor’s Office from European institutions and, to a certain extent, from national authorities in the handling of cases, was underlined. Continuous dialogue, consultation, synergies with national authorities and structural integration in the national systems were felt to be essential factors in the future success of the European Public Prosecutor’s Office.

Debate took place on the variety of procedural, evidential and investigative rules among Member States and the risk of inadmissibility of evidence before national courts, forum shopping, and the need for safeguarding fundamental rights. Consultative Forum members affirmed that Eurojust can bring clear added value to the work of the European Public Prosecutor’s Office.

The conclusions of the Consultative Forum will be published as a Council document and made available on the Eurojust website.



Photo © Eurojust

The European Commission will consider a series of significant legal, institutional and organisational matters, such as the relationship with Eurojust, OLAF, and national authorities in the Member States.

out definitions, minimum sanctions for fraud and minimum rules on where and for how long these crimes can be prosecuted; (2) gradually eliminating procedural obstacles to fraud investigations and prosecutions; and (3) putting in place a European Public Prosecutor's Office, with the protection of the EU's financial interests as its core activity.

#### *Draft Proposal for a Directive on PIF*

In July 2012, the Commission proposed a PIF Directive. This has generated a large volume of papers, debates and consultations. The PIF Directive endeavours to achieve consensus on the definition of the EU's financial interests, defined as:

- (a) *"...the Union budget; and*
- (b) *the budgets of institutions, bodies, offices and agencies established under the Treaties or budgets managed and monitored by them;"*

The objectives of the proposal are to further harmonise definitions of certain crimes (such as fraud and corruption), introduce new common concepts (such as misappropriation,

abuse in public tender or grant procedures) and harmonise, for the first time, levels of sanctions.

A great majority of the Member States support the basic thrust and the objectives of the draft PIF Directive. However, a number of substantive and controversial issues have been raised by the delegations, including the legal basis for the proposal, fraud-related offences, the penalties for natural persons, the imprisonment thresholds and minimum sanctions and the prescription of PIF offences.

Negotiations are ongoing, but discussions at the European Parliament have not yet commenced.

#### *Procedural obstacles to the creation of the European Public Prosecutor's Office*

The European Commission will consider a series of significant legal, institutional and organisational matters, such as the relationship with Eurojust, OLAF, and national authorities in the Member States. Procedural issues will also require attention; important factors are, *inter alia*, the involvement



of the European Parliament, the legislative process if unanimity requirements are not met, and the possible way forward via enhanced cooperation with the participating Member States.

Once established, the national authorities will be requested by the European Public Prosecutor's Office to carry out investigations under its authority, meet deadlines, and ensure full cooperation and coordination with the European Public Prosecutor's Office. Such "supra-

national" fraud investigations and prosecutions will raise a number of legal and practical issues such as the resolution of conflicts of jurisdiction, admissibility of evidence, and defence rights, which the initiative must also address.

The European Commission has announced its intention to introduce, in parallel, a regulation reforming Eurojust and a regulation to create the European Public Prosecutor's Office in 2013. Both proposals are anticipated to

be met with great interest throughout the European Union, and will establish another milestone in the dynamic development of an effective and efficient concept for the protection of the financial interests of the European Union.

This issue closes with an interview with Michèle Coninx, President of Eurojust and National Member for Belgium, who shares some observations on a future European Public Prosecutor's Office and its relationship with Eurojust. ■

## Interview with Ms Michèle Coninx President of Eurojust and National Member for Belgium

*Eurojust News: Do you consider fraud against the financial interests of the European Union to be a problem?*

**M**s Coninx: "Fraud is a widespread problem that becomes evident in a globalised economy in times of financial crises. From a judicial perspective, asset recovery is one of the main objectives. Large-scale fraud activities require a certain level of organisation and infrastructure. Eurojust is competent to ensure coordination of investigations and prosecutions. The intervention of Eurojust has consistently provided added value by facilitating the exchange of information, the execution of letters of request and the freezing and seizure of the profits of crime.

Observations made by Eurojust show that a certain alignment of national legislation facilitates common understanding and cooperation, assists in the coordination efforts of Eurojust, and eventually leads to better results. Participants at the Eurojust strategic meeting on VAT fraud in March 2011 acknowledged, for instance, that the lack of approximation of criminal law is an issue, especially with respect to VAT fraud, where the approximation of definitions, levels of sanctions and statutes of limitation in the Member States should be considered. With the entry into force of the Lisbon Treaty, the European area of freedom, security and justice is certainly moving to-

wards a new phase to combat crimes affecting the EU's financial interests, in a more effective way."

*Do you see the need for the creation of the European Public Prosecutor's Office?*

"The Lisbon Treaty leaves 'room for manoeuvre' when it comes to the possible new player in the European area of freedom, security and justice and the question of how this body will be integrated into the existing landscape. The establishment of the European Public Prosecutor's Office raises many issues and concerns, from political, legal, institutional and procedural perspectives. If established, the European Public Prosecutor's Office must operate as part of a coherent system, where the functioning of all national and EU actors is coordinated towards the achievement of a common goal.

When striving to effectively protect the financial interests of the European Union in a globalised economy and given the current vulnerability of the financial system, the possibilities offered by Article 85 TFEU to strengthen Eurojust's role in this context should be seized. In particular, the possibility for Eurojust to prevent and resolve conflicts of jurisdiction could be beneficial to the European Public Prosecutor's Office and would avoid the risk of forum shopping due to a lack of harmonisation of criminal and procedural rules

within the European Union. One could imagine that the European Public Prosecutor's Office will be entitled to request Eurojust to act in the same way that national authorities are currently entitled to act in requesting the assistance of Eurojust in accordance with the Council Decision on Eurojust.

Eurojust's expertise and experience as the judicial body in the European Union at EU level, and its working tools and working relationships, need to be used to their full potential. Considering the wording of Article 86 TFEU, which speaks of an evolution of the European Public Prosecutor's Office 'from Eurojust', the unique position of Eurojust becomes very clear. Therefore, a complementary relationship between any future European Public Prosecutor's Office and Eurojust will be essential. In fact, Articles 85 and 86 TFEU call for an integrated approach and must be developed in parallel to create a coherent system and avoid overlapping of tasks and duplication of efforts. In designing the European Public Prosecutor's Office, attention needs to be given to the role of Eurojust; in reforming Eurojust, the possible creation of the European Public Prosecutor's Office should be taken into account. Consequently, the European Commission announced a proposal on the creation of a European Public Prosecutor's Office and at the same time a regulation on the reform of Eurojust in 2013. Based on 11 years of Eurojust's operational experience, I believe

that a gradual enhancement of options in judicial cooperation is needed to tackle the increasing flexibility of criminal networks and the complexity of the fight against crime with a cross-border dimension.

In certain cases, when the facilitating and advisory roles of Eurojust have reached their limits, Eurojust could be empowered to initiate investigations and to act on the prevention and resolution of conflicts of interest, particularly in relation to offences against the EU's financial interests, and to complement the work of a future European Public Prosecutor's Office. Any additional powers conferred upon Eurojust should arise from definite needs and requirements identified in casework, and the actual use of such powers should be the last resort in avoiding impunity gaps as well as issues in relation to the *ne bis in idem* principle."

*How do you envision the link between the European Public Prosecutor's Office and Eurojust working in practice?*

"Eurojust works with the national authorities in the Member States in a collegial and horizontal manner, serving as facilitator of coordination and cooperation. The vertical concept of the European Public Prosecutor's Office adds another dimension. The European Public Prosecutor's Office would have an important role in taking on, assessing and monitoring the cases within its

competence. Eurojust will continue to work, on the basis of its competence, independently from the European Public Prosecutor's Office and will be of substantial use in the management of cases, together with the competent national authorities, and in bringing cases to the appropriate national courts. The close link between Eurojust and each of the Member States via the ENCS is an ideal structure to maintain the necessary ties to the national systems and authorities. Hence, both concepts can be seen as complementary and relying on the commitment of the national practitioners.

In the likely scenario that the European Public Prosecutor's Office is created through enhanced cooperation, Eurojust's assistance in facilitating cooperation and coordination in cases involving Member States that are not participating in the European Public Prosecutor's Office by holding coordination meetings, setting up coordination centres, making use of On-Call Coordination (OCC), assisting in JITs, etc., would provide considerable added value. For European Public Prosecutor's Office cases involving third States, Eurojust might foster cooperation via its contact points.

Finally, taking into account the limited scope of competence of the European Public Prosecutor's Office, Eurojust can, in connected crime cases that fall outside of the competence of the European Public Prosecutor's Office, coordinate the efforts of the European Public Prosecutor's Office and the competent national authorities. In cases where suspects of PIF offences are involved in other serious transnational crimes and where the overlapping competences of the European Public Prosecutor's Office and national authorities endanger a favourable result, coordination is needed."

*Should a centralised or decentralised approach be taken to setting up the European Public Prosecutor's Office?*

"Speaking from the experience of Eurojust as the European Judicial Cooperation Unit set up as an intergovernmental agency, and referring to the aforementioned idea of integrated concepts of vertical and horizontal nature, a central office, assisted by satellite offices or delegates in the Member States, seems to be the most effective and efficient way to deal with PIF cases that will be heard by national courts.

By closely linking, or even integrating, the European Public Prosecutor's Office delegates in the Member States to the ENCS, coordination of the ac-



Michèle Coninx (photo © The European Union M@S)

“... gradual enhancement of options in judicial cooperation is needed to tackle the increasing flexibility of criminal networks and the complexity of the fight against crimes with a cross-border dimension.”

tions of Eurojust and the European Public Prosecutor’s Office at national level could be ensured. The ENCS could play an essential role as a channel and single entry point to relay information, provide advice on whether a case requires the assistance of Eurojust, the intervention of the European Public Prosecutor’s Office or both, facilitate the first link to other bodies such as the European Judicial Network and Europol, and facilitate the first entry point for PIF connected cases where coordination is required at EU level.”

*How do you see the interaction among the European Public Prosecutor’s Office, Eurojust and other relevant actors in the field, such as OLAF and Europol?*

“The expertise, infrastructure and partnerships in the European area of freedom, security and justice that have developed over the past years should be utilised and provide a natural basis for future enhanced cooperation. A vital success factor for any operational action is the availability of relevant information and its communication between involved actors. Article 13 of the Council Decision on Eurojust immediately comes to mind in this context, providing an obligation for competent authorities of the Member States to report to Eurojust any information necessary for the performance of its tasks. This information enables Eurojust to identify links between cases, to detect possible conflicts of jurisdiction, to identify cases that require judicial cooperation and to communicate its findings to the competent national authorities. Information concerning cases in which Eurojust’s assistance has been requested, as well as information gathered on the basis of Article 13 when relevant to the European Public Prosecutor’s Office competence, could be of great value for the operational actions of the European Public Prosecutor’s Office.

Eurojust, of course, liaises and exchanges information with partners

such as Europol and OLAF. Europol regularly attends coordination meetings at Eurojust, providing valuable information and analysis from Europol’s Focal Points and complementing the support provided by Eurojust to Member States.

OLAF is a privileged partner in the fight against fraud, corruption and other crimes affecting the financial interests of the European Union. On the basis of the 2008 Practical Agreement on arrangements of cooperation between Eurojust and OLAF, collaboration on complex cases has been enhanced, with an increased exchange of case referrals, case summaries and case-related information and a regular follow-up of ongoing cases. However, closer cooperation with OLAF and the involvement of Eurojust at an early stage of relevant cases is needed, providing for the judicial follow-up for cross-border investigations related to PIF crimes. The new OLAF regulation is expected to greatly contribute to future operational cooperation between Eurojust and OLAF, as it provides specific reference to the transmission of relevant information to Eurojust.”

*How can synergies between a European Public Prosecutor’s Office and Eurojust be best ensured?*

“Eurojust believes that the European Public Prosecutor’s Office will profit from Eurojust’s operational experience in international judicial cooperation and the tools it has developed. The European Public Prosecutor’s Office should maintain direct and constant contact with the Eurojust National Members in its operational work and be entitled to receive information from them and exchange information with them. A legal basis for mutual information exchange would be required in future regulations on the European Public Prosecutor’s Office and Eurojust. The European Public Prosecutor’s Office should participate in Eurojust College meetings on PIF-related matters

and maintain daily contact at operational level with the Eurojust National Desks.

Coordination meetings and operational coordination centres at Eurojust could serve as links between the European Public Prosecutor’s Office and involved judicial authorities, ensure real-time transmission of information and coordinate searches and arrests taking place simultaneously in all European Public Prosecutor’s Office States, non-European Public Prosecutor’s Office States and third States involved.

Eurojust’s role could be decisive in cases where non-European Public Prosecutor’s Office States or third States are involved or connected crimes are to be managed. Eurojust’s assistance in JITs, including the provision of EU funding, could be valuable. The role and position of the European Public Prosecutor’s Office in a JIT may give rise to legal questions that Eurojust, with its expertise in this field, could help to address in the relevant JIT agreement.

Technical facilities, such as OCC, could be extended to the European Public Prosecutor’s Office. The technical means for the exchange of judicial information between the national authorities and the European Public Prosecutor’s Office need to be constructed in the most efficient and secure manner. Access to Eurojust’s Case Management System and the secure connection being put in place between the ENCS members and Eurojust could be used. This system could have two data sets (one for Eurojust and one for the European Public Prosecutor’s Office). However, a number of related legal and data protection issues need to be tackled in this context.

Both operational effectiveness and cost efficiency would be ensured by the setting-up of infrastructure ensuring close ties with Eurojust. Eurojust’s experience has shown that true collaboration requires physical presence.

Therefore, at a minimum, the European Public Prosecutor's Office and Eurojust should share their seat in The Hague, thus also ensuring close proximity to Europol. A sharing of generic services (e.g. Information Management, Human Resources, and Budget and Finance units) between Eurojust and the European Public Prosecutor's Office would ensure a convincing economy of scale.

In conclusion, although the exact meaning of 'from Eurojust' remains to be defined, the prominent role that Eurojust is being called upon to play in the context of the European Public Prosecutor's Office is clear. Eurojust will contribute to the success of a future European Public Prosecutor's Office with its 11 years' expertise as a key player in the judicial dimension, its working relationships with partners such as Europol, OLAF and the European Judicial Network, and with third States, and its close interaction with the national authorities in the Member States.

When the European Public Prosecutor's Office is integrated into the current landscape of police and judicial cooperation in criminal matters, the utilisation of existing resources and the creation of synergies, possibly by co-location of this new EU actor in The Hague, would ensure a functioning and cost-efficient solution to step up the protection of the financial interests of the European Union. The Lisbon Treaty also strengthens the roles of the European Parliament and national parliaments, as democratic accountability is an important cornerstone in a system balanced between the principles of freedom, security and justice, and which is bound to serve the interests of the European citizens and respect the fundamental rights of individuals. This exciting time in European criminal law and judicial cooperation in criminal matters provides an opportunity to implement changes that will mean another milestone in shaping a European area of freedom, security and justice, keep its citizens safe, and put criminals behind bars." ■

## Introducing Vice-President Carlos Zeyen

**M**r Carlos Zeyen, National Member for Luxembourg, joined Eurojust in 2006 and was elected Vice-President in May 2012.

The author of several legal publications, Mr Zeyen has more than 20 years' experience in private practice, and has lectured on the topic of Comparative Constitutional Law. He set up the Luxembourg Financial Intelligence Unit (FIU-LUX) in 2001. Between 1999 and 2006, Mr Zeyen was a representative for Luxembourg to the Financial Action Task Force (FATF) and since 2002 a member of the FATF Working Group on Terrorist Financing. Since 2009, he has been the Eurojust contact point for FATF.



Photo © Eurojust

*Eurojust is a European Union body established in 2002 to stimulate and improve the coordination of investigations and prosecutions among the competent judicial authorities of EU Member States when they deal with serious cross-border crime.*

*Each Member State seconds a judge, prosecutor or police officer to Eurojust, which is supported by its administration. In certain circumstances, Eurojust can also assist investigations and prosecutions involving a Member State and a State outside the European Union, or involving a Member State and the Community.*

*Eurojust supports Member States by:*

- ▶ *coordinating cross-border investigations and prosecutions in partnership with judges, prosecutors and investigators from Member States, and helping resolve conflicts of jurisdiction;*

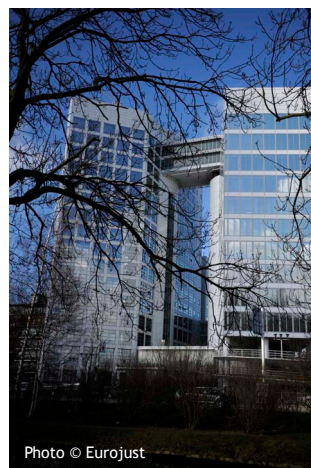


Photo © Eurojust

- ▶ *facilitating the execution of EU legal instruments designed to improve cross-border criminal justice, such as the European Arrest Warrant;*

- ▶ *requesting Member States to take certain actions, such as setting up joint investigation teams, or accepting that one is better placed than another to investigate or prosecute; and*

- ▶ *exercising certain powers through the national representatives at Eurojust, such as the authorisation of controlled deliveries.*

### Colophon

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Editor in Chief: Joannes Thuy, Press Officer & Spokesperson  
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For enquiries:

Phone: +31 70 412 5509

E-mail: [info@eurojust.europa.eu](mailto:info@eurojust.europa.eu)

Website: [www.eurojust.europa.eu](http://www.eurojust.europa.eu)

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