



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 November 2004**

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REV 4**

**EUROJUST 78**

**NOTE**

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From : Presidency  
To : Coreper/Council

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Subject : Draft Council Conclusions on an improved use of Eurojust in the fight against serious crime

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Delegations will find enclosed the revised draft Council Conclusions on an improved use of Eurojust in the fight against serious crime, as they were agreed by the Article 36 Committee on 22 November 2004, subject to a scrutiny reservation by the German delegation.

## Draft

### COUNCIL CONCLUSIONS

on an improved use of Eurojust in the fight against serious crime

THE COUNCIL OF THE EUROPEAN UNION,

Having noted, as a background to these conclusions, the following documents:

- Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime<sup>1</sup>,
- The annual reports of Eurojust of 2002<sup>2</sup> and the Council Conclusions thereon<sup>3</sup> as well as of 2003<sup>4</sup> and the Council Conclusions thereon<sup>5</sup> where the Council instructs its competent bodies to examine with attention the annual report and any outstanding matter relating to Eurojust and asks the Presidency to report to the Council on its conclusions and recommendations and to suggest to the Council any policy priorities it may wish to make,
- The Eurojust report on the scope of further measures to improve its capacity to contribute to the fight against Terrorism<sup>6</sup>,
- The report by the Commission on the implementation of the Eurojust Decision<sup>7</sup>,

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<sup>1</sup> OJ L 63, 6.3.2002, p. 1.

<sup>2</sup> doc. 9124/03 EUROJUST 11

<sup>3</sup> doc. 9771/03 EUROJUST 12

<sup>4</sup> doc. 8284//1/04 EUROJUST 24 REV 1

<sup>5</sup> doc. 8560/1/04 EUROJUST 25 REV 1

<sup>6</sup> doc. 10008/04 EUROJUST 49

<sup>7</sup> doc. 11280/04 EUROJUST 66 + ADD 1

- The results of the seminar, organised by the Italian Presidency in December 2003, on the powers of national members of Eurojust<sup>1</sup>,
- Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP<sup>2</sup>,
- Council Framework Decision 2002/465/JHA of 13 June 2002 on Joint investigation teams<sup>3</sup>,
- Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States<sup>4</sup>
- The Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States<sup>5</sup> and the Protocol of 16 October 2001 thereto<sup>6</sup>
- The Declaration of the European Council on Combating Terrorism of 25 March<sup>7</sup>, and the Action Plan on Terrorism, adopted by the European Council on 17 June 2004
- The Hague Programme “Strengthening Freedom, Security and Justice in the European Union” of 4 and 5 November 2004<sup>8</sup>.

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<sup>1</sup> doc. 15279/03 EUROJUST 15 + COR 1

<sup>2</sup> OJ L 16, 22.1.2003, p. 68.

<sup>3</sup> OJ L 162, 20.6.2002, p. 1.

<sup>4</sup> OJ L 190, 18.7.2002, p. 1.

<sup>5</sup> OJ C 197, 12.7.2000, p. 3

<sup>6</sup> OJ C 326, 21.11.2001, p. 2

<sup>7</sup> doc. 7906/04 JAI 100 ECOFIN 107 TRANS 145 RELEX 123 ECO 73 PESC 208 COTER 20 COSCP 142.

<sup>8</sup> Annex I to doc. 14292/04 CONCL 3

Noting that:

- (1) Eurojust is set up to stimulate and improve the co-ordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States, to improve co-operation between the competent authorities of the Member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests and European arrest warrants, and to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions in cross border cases more effective.
- (2) Not all Member States have implemented the relevant instruments of the European Union after the deadline for the implementation has expired.
- (3) On 25 March 2004 the European Council acknowledged that the legislative framework created by the Union for the purpose of combating terrorism and improving judicial cooperation has a decisive role to play in combating terrorist activities. It urged all Member States to take any measures that remain necessary to implement fully and without delay the Decision establishing Eurojust.
- (4) On the same occasion, the European Council called on Member States to ensure that the optimum and most effective use is made of Eurojust, to promote cooperation in the fight against terrorism. It called on Member States to ensure that Eurojust representatives are associated with the work of Joint investigation teams as far as possible.

- Concerning implementation of legislative instruments:

1. TAKES NOTE of the report established by the Commission on the legal transposition of the Council decision of 28 February 2002 setting up Eurojust.
2. CALLS UPON all Member States that have not already done so, to fully implement the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust while taking account of the report from the Commission, and to provide information on progress made.
3. RECOMMENDS that the information referred to under point 2 shall be submitted to the Council and the Commission as soon as possible, and that a further report on the implementation of the Council Decision, established on the basis of that information and a further report from the Commission, should be submitted to the Council by mid 2005. This report should include the information covering the new Member States.
4. CALLS UPON all Member States that have not already done so, to implement the Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (in particular to designate a Eurojust national correspondent for terrorism matters under Article 3 of this Council Decision);
5. NOTES that it is of utmost importance for the practical working of Eurojust that the competent national authorities provide the national members of Eurojust with all information that is necessary to fulfil their tasks and that the national members of Eurojust have the judicial powers, in accordance with Articles 9 and 13 (2) of the Eurojust Decision, to have access to all information that is necessary to fulfil their tasks.

6. RECOMMENDS that the Member States examine whether national members should be provided with the judicial powers in accordance with Article 9 (3) of the Eurojust Decision, in particular for purposes of avoiding, in cases of urgency, that ongoing investigations and prosecutions may be jeopardised. In this respect, the Council also takes note with interest of the experience of some Member States having given their national members powers to receive and transmit letters rogatory, if necessary for reasons of coordination and notwithstanding the powers of the competent national authorities. Eurojust is invited to evaluate its experiences of the nature and extent of the judicial powers of its national members and report to the Council by mid 2005. This report should include, where necessary, recommendations for possible improvements.
  
7. CALLS UPON Member States to ensure that enough resources are available at national level to carry out requests from Eurojust, in conformity with Articles 6 and 7 of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust, in an adequate and timely manner.

- Concerning the work carried out by Eurojust:

8. WELCOMES the fact that Eurojust has been dealing increasingly with cases involving coordination between more than two Member States and recommends that Eurojust prioritises such cases whilst referring merely bilateral cases to the EJM, where appropriate.
9. RECOMMENDS, notwithstanding conclusion no. 8, Eurojust to be associated with the setting up and the work of Joint Investigation Teams, in accordance with the Framework Decision of 13 June 2002 on Joint Investigation Teams<sup>1</sup>. It should in particular be associated where more than two Member States are involved or where a need for coordination is established, as well as to fulfil its role with regard to European arrest warrants and requests for mutual legal assistance to the maximum extent, in particular in cases related to terrorism or financing of terrorism. Without prejudice to ongoing discussions within the Council on the provision of information to Eurojust, the Council considers in this context that it would be useful if Member States inform Eurojust of the setting up of Joint investigation teams and of coordination in terrorist cases that affect or may affect two or more Member States. The legal obligation to inform Eurojust as well as the possibility of seeking its advice in certain cases relating to the application of the European arrest warrant is recalled.
10. RECOMMENDS that national judicial authorities give the necessary feedback on the outcome of investigations and prosecutions to Eurojust in cases where Eurojust has been involved so as to enable Eurojust to assess its participation and improve its procedures. Eurojust could facilitate such feedback by drawing up a standard debriefing form for the attention of competent authorities.
11. ENCOURAGES Eurojust to continue to build up the necessary personnel and technical infrastructure to fulfil the tasks that it has been given in due time.

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<sup>1</sup> OJ L 162, 20.6.2002, p. 1.

12. WELCOMES the fact that all Member States, and also the host Member State, grant Eurojust the utmost support to create its infrastructure.
  
13. REAFFIRMS the importance of providing Eurojust, within the framework of the financial perspectives, with the necessary budgetary means to enable Eurojust to fulfil all its tasks, and in particular the budgetary means necessary to complete the building up of Eurojust, including its telecommunications system. In that context, it welcomes the work of the Italian Ministry of Justice, co-financed by the European Community AGIS programme, to finish the E-POC project on setting up a secure telecommunications system for Eurojust as soon as possible. The budgetary requests made by Eurojust will be studied with attention with a view to optimising the work of the body, in particular with regard to the setting up of a system for secured transfer of data concerning terrorist cases.
  
14. WELCOMES that Eurojust has finalised work on a data protection regime and submitted the Rules of Procedure as regards data protection to the Council for approval, and that it intends to ensure that the data protection regime will be implemented in its entirety as soon as possible.



- Concerning the relations of Eurojust to other bodies / states:

15. RECOMMENDS that maximum use is made of the Europol/Eurojust Agreement and that relations between national members of Eurojust and national desks at Europol and Europol National Units, as well as with Europol itself, are further intensified.
16. WELCOMES the intention of Eurojust to establish a Joint Working Group with Europol on the basis of the agreement between Europol and Eurojust, so as to improve the fight against terrorism by hosting regular meetings on terrorist activities and meetings dedicated to individual cases when special circumstances require it. The Council considers in this context that increased use should be made of Europol's Analysis Work Files and recalls that the European Council at Tampere specifically provided that Eurojust's work should be based "notably on Europol's analysis".
17. NOTES that it is of utmost importance that exchange of information between Europol and Eurojust can take place without it being hampered by unnecessary constraints, taking account of the Europol Convention and the Eurojust Decision.
18. RECOMMENDS in this respect the further improvement of the exchange of information between both organisations. [...] In this context reports should be made by Europol and by Eurojust to the Council on how they have improved their exchange of information.
19. CALLS UPON Eurojust and OLAF to improve their co-operation on the basis of Article 26 of the Eurojust Decision. The Council recalls that insofar as exchange of personal data would be concerned, such exchange is regulated by Article 27 (3) of the Eurojust Decision.

20. STRESSES that work to improve the quality of co-operation between Eurojust and the European Judicial Network (EJN) should be continued. The possibility of synergies in the field of common IT infrastructures should be explored, taking account of security requirements and a cost-effective use of the Community budget.
21. INVITES Eurojust to present to the Council a list of priority countries, so as to facilitate the exchange of information with these countries and to allow for the detachment of liaison magistrates to Eurojust, where appropriate. The Council considers it desirable that Eurojust give priority to concluding agreements with candidate countries and with those third countries that other relevant EU-organisations have concluded agreements with, taking account in particular the agreements concluded by Europol.
22. INVITES Eurojust to establish, in addition to the recently submitted co-operation agreement with Norway, co-operation with other third States, international organisations and bodies, where appropriate, with a view to facilitating the exchange of information with them, and to allow for the detachment of liaison magistrates to Eurojust. Such cooperation should be in line with the building up of the resources of Eurojust and with a programme for the development of its external relations, in line with general policies of the Union in external relations.
23. ASKS the Presidency to consider inviting Eurojust to discussions held within the Council, where Eurojust will be able to share its practical experiences, in particular as regards terrorism.
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