

Patrik Kiss – Barbara Kozma – Ildiko Mohos
Trainee Prosecutors of Hungary

Accompanying teacher: Tamas Javorszki
Deputy Chief Prosecutor

Eurojust: Past, present and the possible future



Themis Semi - Final A Competition

Slovakia
Judicial Academy of the Slovak Republic
Omšenie, 2015

Introduction

In this paper we write about the evolution, the present and the possible future of Eurojust, especially the legal background, the composition, the functioning of Eurojust and the opportunity of establishing the European Public Prosecutor's Office with our critical opinion and appreciations as well as proposals. We show the motives of the establishment, the evolvement of the idea and the most essential and important provisions of the three basic legal instruments of Eurojust. The main goals of establishment and the tasks of Eurojust will be presented. The reader will see the organisational structure of Eurojust such as the role of the college, national members, administration and administrative director. The operational activity of Eurojust is also shown for example the coordination meetings, coordination centre, on-call coordination and case management system. As for the future, our paper focuses on the background of EPPO, the Hungarian attitude and the present situation of the possible establishment. However, we limited ourselves to the most critical points of the abovementioned aspects of Eurojust only, because of the length restrictions.

The motives of the establishment

The implementation of the principle that persons, products, services and capital should be allowed to move freely from one country to the other in the European Union was intended to facilitate cross-border economic activity, and to contribute to the welfare of the European citizens. At the same time, however, the „opened borders” provided new possibilities also for criminals to pursue their lucrative carrier in a more simple and unnoticeable way across national frontiers, taking advantages of the cumbersome procedures of national authorities required to investigate and to prosecute crimes affecting two or more Member States. The major increase of organised crime directed the attention to the lack of awareness of the European dimension, the insufficiency of the judicial co-operation in criminal matters,¹ and also created an undoubted and growing necessity for a coordinated European institutional and legal framework of the European Union's criminal justice system. As an objective of the European Union, the Treaty of Amsterdam² introduced the term „*area of freedom, security and justice*” aiming to provide citizens with a high level of safety, although putting it into

1 Justice and Home Affairs was the third pillar of the European Union's pillar structure introduced with the Maastricht Treaty in 1993. In 2003 the third pillar was renamed Police and Judicial Co-operation in Criminal Matters, and existed until 2009.

2 The Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts, was signed on 2 October, 1997, and entered into force on 1 May, 1999.

effect was not simple. The Member States of the European Union have their own unique criminal justice systems with their own criminal and procedural laws, and a traditional reluctance can also be perceived in connection with European-wide actions in criminal matters, which complicates the efficient cooperation in this field.

In response to this situation, the European Union adopted a twin-track approach comprising arrangements, based on the principle of mutual recognition of Member States' national criminal laws and procedures, and the establishment of new institutions.³ On 29 May, 2000 the Member States signed the Convention on Mutual Assistance in Criminal Matters between the Member States of EU⁴ with the view to supplement the Convention on Mutual Assistance in Criminal Matters of the Council of Europe, and its Protocol.⁵ Pertaining to the other approach, the creation of a coordinated European institutional framework in the field of criminal matters was envisaged to give added value to the fight against cross-border crimes.

As for police co-operation, Europol⁶ handles criminal intelligence and improves the prevention of and the combat against serious forms of international organised crime. Turning to the field of judicial co-operation, the European Judicial Network⁷ (EJN) has an important role providing contact between the competent authorities of the Member States. EJN is a network of national contact points for the facilitation of judicial co-operation in criminal matters, but this Network was not a sufficient infrastructure to coordinate co-operation in crimes with cross-border dimension.

The evolution of the idea

As a response to the shortcomings of judicial co-operation in criminal matters the idea of establishing a prosecution co-operation unit - as a judicial counterpart of Europol, and having

3 Judicial Cooperation in the EU: the role of Eurojust Report with evidence, 23rd Report of Session 2003-04, HL Paper 138, the Authority of the House of Lords, 2004, p. 7

4 Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union OJ C 197, 12.7.2000, p. 1–2. The Convention inter alia enabled the judicial authorities to make direct contacts and regulated the work of Joint Investigation Teams.

5 The Convention was concluded on 20 April, 1959 by 47 Member States of the Council of Europe in Strasbourg and entered into force on 12 June 1962. The Convention has been supplemented by the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters signed in 1978.

6 The European Police Office was set up in 1996 by the Convention of 26 July 1995 on the establishment of a European Police Office (Europol Convention). The Europol Convention was superseded by the Council Decision of 6 April 2009 establishing the European Police Office, Council Decision of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37–66) converting Europol into a formal EU agency.

7 The network was established by the Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network OJ L 191, 7.7.1998, p. 4–7

coordinative functions unlike EJM - has gradually evolved. The establishment of Eurojust was first endorsed on 15 and 16 October, 1999 in Tampere, where a special meeting was held by the European Council on the creation of an area of freedom, security and justice in the European Union.⁸ The European Council threw the weight on the side of setting up a purely co-operational unit instead of a supranational prosecutorial system envisaged in the Corpus Juris⁹ project and in the Green Paper of the Commission.¹⁰ It is essential to mention, that the key role of the public prosecutor in international co-operation was emphasized by a recommendation adopted by the Council of Europe on 6 October, 2000,¹¹ declaring that awareness of the need for active participation in international co-operation should be promoted among public prosecutors in general.

As a forerunner of Eurojust, the Provisional Judicial Cooperation Unit, the so-called Pro-Eurojust, was set up on 14 December, 2000 on the initiative of Portugal, France, Sweden and Belgium.¹² The operative activity of this provisional unit commenced on 1 March, 2001 under the Swedish Presidency of the European Union. Pro-Eurojust was seated within the Secretariat-General of the Council in Brussels, and was composed of the National Correspondents, who were magistrates from each Member States. The National Correspondents dealt with cases referred from national authorities, but they were also participants of the working group drafting the constituent act of Eurojust. The negotiation

8 According to the point 46 of the Conclusions of the Presidency „to reinforce the fight against serious organised crime, the European Council has agreed that a unit (EUROJUST) should be set up composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to its legal system. Eurojust should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as of co-operating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.”

http://www.europarl.europa.eu/summits/tam_en.htm#

9 Corpus Juris project was initiated by the European Parliament and the European Commission in order to elaborate guiding principles pertaining to the criminal law protection of the financial interest of the European Union and to establish the European Public Prosecutor. The study was published in 1997. See: Prof. Dr. John A.E. Vervaele: The Corpus Juris projekt: a Blueprint for Criminal Law and Criminal Procedure in the European Territory (AGON 34/2002 P. 9-13).

10 Green Paper on criminal-law protection of the financial interest of the Community and the establishment of a European Prosecutor (COM (2001) 715 final) was presented by the Commission on 11 December, 2001. Based on the introduction of the Green Paper, the reason of the establishment of a European Prosecutor was “to prosecute perpetrators of fraud affecting the financial interests of the European Communities more effectively.” The Green Paper contained proposals for the relationship between the European Prosecutor and Eurojust.

11 Council of Europe Committee of Ministers Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system. According to point 39. a. „the public prosecutor also plays a key role in the criminal justice system as well as in international co-operation in criminal matters.”

12 Council Decision of 14 December 2000 setting up a Provisional Judicial Cooperation Unit OJ L 324, 21.12.2000, p. 2-3

over the content of this act was surrounded by indecision and discord, although the process was accelerated by the terrorist attack on 11 September, 2001 in the USA.

The most controversial issue was about whether Eurojust should be empowered to purely coordinate or also to initiate investigations. The reason of the reluctance was the potential of Eurojust becoming the embryo of the future European Public Prosecutor's Office. As conclusion of the negotiations, the Member States came to terms that Eurojust will not be empowered to initiate, only to request to initiate investigations. However, to strengthen its power, the Swedish presidency backed by Italy and Portugal achieved that turning down such a request must be justified by the Member State.¹³ Giving a brief overview of the background, the whole planning process could be described as a fight between two antagonistic interests based on the difference of national mentality. Part of the Member States supported the harmonization of criminal law and procedures and also the establishment of centralised EU structures, but the others resisted strictly to transfer of the national authority to a supranational law enforcement entity. According to Mr. Hans Nilsson, who was closely involved in the negotiations as the Head of Judicial Co-operation Division in the Council Secretariat, „ *it is highly likely that Eurojust would never have seen the day if it had not been for the fact that its very idea had something that could satisfy both 'camps' – for one it is the beginning, for the other it is the end.*”¹⁴

The Eurojust Council Decision and its amendments

The Council Decision 2002/187/JHA setting up the European Judicial Cooperation Unit (commonly referred as Eurojust) with a view to reinforcing the fight against serious crime was published on 28 February, 2002. Eurojust has been operating effectively since 1 March, 2002, its budget was released in May 2002, and the Rules of Procedure¹⁵ was agreed in June 2002. Initially its seat was in Brussels, but on 29 April, 2003 the Unit moved to The Hague, because the efficient co-operation with Europol required geographical proximity.¹⁶ Establishing Eurojust by a single council decision - and not by convention - in an area strictly

13 John D. Occhipinti: The Politics of EU Police Cooperation: Toward a European FBI?, Lynne Rienner Publishers, 2003 p. 127

14 Judicial Cooperation in the EU: the role of Eurojust Report with evidence, 23rd Report of Session 2003-04, HL Paper 138, the Authority of the House of Lords, 2004 p. 8

15 Rules of procedure of Eurojust as adopted unanimously by the College of Eurojust at its meeting of 30 May 2002 and approved by the Council on 13 June 2002.

16 The new seat was officially approved by the Decision taken by common agreement between the representatives of the member states, meeting at the head of state or government level of 13 December 2003 on the location of the seats of certain offices and agencies of the European Union. OJ L 29, 3.2.2004, p. 15–15

related to the sovereignty of the Member States also provided reasons for debate. However, after the judgment of the European Court of Justice,¹⁷ the validity of the establishment was no longer questionable.¹⁸ The implementation of the Decision was a lengthy process, and resulted in disparity as a consequence of the ability provided for the Member States to define the nature and extent of their own National Member's power.¹⁹

The Decision was already amended two times. First, by Council Decision 2003/659/JHA of 18 June, 2003, amending Decision 2002/187/JHA,²⁰ and secondly by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA. The latter decision was published on 4 June, 2009, and it was adopted to enhance the operational capabilities of Eurojust (such as making Eurojust available to national authorities on a 24/7 basis), to increase the exchange and the transmission of information between the National Members and the Member States, to improve the co-operation with national authorities, and to strengthen and establish relationships with privileged partners and third States.²¹ For information purposes only, on 19 July, 2009 the General Secretariat of the Council of the European Union presented a consolidated version of the Eurojust Council Decision, which consists of the constituent act and the two amendments.

Treaties of the EU and the Stockholm Programme

Reviewing the Treaties of the European Union, the Treaty of Nice²² contains provisions in connection with Eurojust. The Treaty of Nice replaced Articles 29 and 31 under Title VI of the Treaty on European Union confirming the role of Eurojust in the field of judicial cooperation and also specifying the methods for the Council to encourage co-operation through the Unit.

The draft Treaty establishing a Constitution for Europe²³ envisaged the establishment of a

17 Judgment of the Court (Grand Chamber) of 3 May 2007 *Advocaten voor de Wereld VZW v Leden van de Ministerraad*. ECR 2007 I-03633. Following the judgment, framework decisions were declared valid as legal instruments under the third pillar.

18 Annika Suominen: *The past, present and the future of Eurojust*, 15 *Maastricht J. Eur. & Comp. L.* 217, 2008, p. 219

19 The difference between the two extremes can be described by the quote from Mr. Nilsson: „*One could be described as an expensive letter box, that is at least how one of the national members described himself, whereas the opposite is a person, a national member who has full powers as a national prosecutor. He can arrest someone, he can order search and seizure, etc.*” *Judicial Cooperation in the EU: the role of Eurojust Report with evidence*, 23rd Report of Session 2003-04, HL Paper 138, the Authority of the House of Lords, 2004 p. 18

20 This amendment contained regulations in connection with budget and discharge.

21 Agnieszka Serzysko: *Eurojust and the European Judicial Network on a new legal basis ERA Forum* February 2011, Volume 11, Issue 4, page 586

22 The Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts was signed on 26 February, 2001, and came into force on 1 February, 2003.

23 The Treaty was drafted in June 2004, and remained unratified as a result of the rejection in France and

European Public Prosecutor's Office, and widened the scope of Eurojust, but the proposal was abandoned.²⁴ What the proposed Treaty could not put into effect, the Lisbon Treaty²⁵ attained.²⁶ Aside from the abolition of the pillar structure, by virtue of the Lisbon Treaty, the proposed provisions concerning Eurojust contained in the draft Treaty were materialized in the primary law. The Lisbon Treaty defined the mission of Eurojust, and gave a broad listing of the tasks including „the initiation of criminal investigations”. This was a qualitative change, which opened up new possibilities in terms of becoming a key institution of the European Union by transferring part of criminal law enforcement competence from Member States to Eurojust. The detailed determination of its structure, working, scope of action and tasks was referred to the future EU legislation. Another important milestone was reached pertaining to the evolution of criminal co-operation, since as a precursor of a federal style of European criminal justice, the conception of establishing a European Public Prosecutor's Office „*from Eurojust*” was finally laid down in the European Union law. The Stockholm Programme also reinforced the provisions of Lisbon Treaty and the implementation of Council Decision 2009/426/JHA envisaging that „*new possibilities could be considered in accordance with the relevant provisions of the (Lisbon) Treaty, including giving further powers to the Eurojust national member; reinforcement of the powers of the Eurojust College or the setting-up of a European Public Prosecutor.*”²⁷

the Netherlands.

- 24 According to the Article III-273 point 1 (a) Eurojust 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*”. The wording of Article III-273 point (1) (a) was a centre of discussions. Many preferred „*request*” instead of „*initiate*” in order to avoid bringing Eurojust closer to a „vertical” centralised model of investigation. Judicial Cooperation in the EU: the role of Eurojust Report with evidence p. 33.
According to Article III-274 „*in order to combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union, a European law of the Council of Ministers may establish a European Public Prosecutor's Office from Eurojust. The Council of Ministers shall act unanimously after obtaining the consent of the European Parliament.*”
- 25 The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. According to Article 85 point 1 “Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States”, and based on point 2 (a) Eurojust tasks „*may include : (a) the initiation of criminal investigations (...)*”. Article 86 point 1 states that, “*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*”, and according to point 2 „*the European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, 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.*”
- 26 Jiri Vlastnik: Eurojust – A Cornerstone of the federal Criminal Justice System in the EU?, In: Elspeth Guild-Florian Geyer: Security versus Justice?: Police and Judicial Cooperation in the European Union, Ashgate Publishing Company, 2008, p.45
- 27 The Stockholm programme was adopted by the European Council in 2010, and it sets out the objectives of

Facing with the EU enlargement

Since Eurojust is a body of the Union,²⁸ and the national members are seconded from the Member States, the EU enlargements affected the composition and the operation of Eurojust. The largest single enlargement in terms of people and number of countries occurred in May 2004, when eight Central and Eastern European countries: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, as well as two Mediterranean countries: including Malta and Cyprus joined the EU. Bulgaria and Romania acceded in January 2007, and the number of the Member States grew to twenty-eight with Croatia joining to the EU in July 2013. Concerning Eurojust, 11 years after its establishment the number of the national members almost doubled (increased from 15 to 28), and the duty of accommodating further different national legal systems besides the already extant ones significantly hampered the progress of Eurojust particularly in its early years.

Agreements with third countries and other organisations

Since Eurojust has legal personality,²⁹ it is entitled to play an active role in negotiating and concluding agreements with third countries, EU agencies and other organisations. The subject of these agreements is in general the exchange of judicial information, the processing of personal data and the participation in meetings. Agreements were concluded with Norway, Iceland, the USA, Switzerland, the former Yugoslav Republic of Macedonia and Liechtenstein. Liaison prosecutors are seconded to Eurojust from Norway, the USA and Switzerland to further enhance the cooperation between these countries and the Unit. As a supplement of cooperation agreements, a worldwide network of contact points³⁰ is also maintained, furthermore, in specific cases with essential interest assistance can be provided in default of agreement.³¹ The relationship between the Eurojust and the European Judicial Training Network, ICC, Europol, Iber-RED, CEPOL, European Commission, ICPO-INTERPOL, United Nations Office on Drugs and Crime, Frontex and OLAF is regulated by Memoranda of Understanding.

the EU to develop the area of freedom, justice and security in the period 2010-2014. The Stockholm Programme – an open and secure Europe serving and protecting citizens OJC 115 4.5.2010. p.13

28 Council Decision 2002/187/JHA, Article 1

29 Council Decision 2002/187/JHA, Article 1

30 Eurojust has established contact points in 29 non-Member States: Albania, Argentina, Bosnia and Herzegovina, Brazil, Cape Verde, Canada, Egypt, FYROM, Iceland, India, Israel, Japan, Republic of Kazakhstan, Korea, Mongolia, Montenegro, Norway, Russian Federation, Liechtenstein, Moldova, Serbia, Singapore, Switzerland, Taiwan, Thailand, Tunisia, Turkey, Ukraine, USA.

31 Council Decision 2002/187/JHA, Article 3 (2)

The legal framework of Eurojust

According to the preamble of Council Decision it is necessary to improve judicial cooperation between Member States further, in particular in combating forms of serious crime often perpetrated by transnational organisations.³² We need to see clearly that Eurojust was established by a decision as a body of the European Union and as a legal person. The nature of this legal instrument brings up several very critical points. First of all, the original vision was to create the European Public Prosecutor's Office. The European prosecutor was shown as a supranational European organisation and the most efficient way of protecting the financial interests of the European Union. The establishment of the European Public Prosecutor's Office encountered objections. "However, the field of criminal co-operation in the EU is a sensitive one."³³ The vision of creating this entity failed because the Member States refuse to give up their sovereignty in criminal matters. The Member States of the European Union wish to cooperate in the field of criminal matters make minimum standard rules, but they are reluctant to give up any more elements of their sovereignty.

In our opinion, the difficulty of establishing any entities to cooperate in criminal matters in the European Union is obvious. The Member States are afraid to lose sovereignty, thus they dismissed the opportunity to create the European Public Prosecutor's Office in the past. A co-operational entity was created called Eurojust instead of a supranational organisation. However we believe we should go forward in the path to establish the European prosecutor regarding the prosecution and investigation of serious crimes involving two or more Member States. It would be reasonable and more sufficient to fight against serious, cross border and organised criminal offenses. From our point of view European Public Prosecutor's Office should be created from Eurojust. This would be a deeper cooperation and legal harmonization between the Member States. Whereas Eurojust facilitates only, by contrast the European prosecutor would investigate. Whereas Eurojust is basically an intergovernmental institution, by contrast the European Public Prosecutor's Office would be a supranational organisation. Whereas Eurojust performs its tasks in a multi-jurisdictional EU, by contrast the European Public Prosecutor's Office would execute its tasks within a single judicial area.

³² Preamble (1) of Council Decision 2002.

³³ Annika Suominen: *The past, present and the future of Eurojust*, Maastricht Journal of European and Comparative Law, Netherlands, Volume 15, November 2 2008: 217.p.

The Council Decision 2002 regulates the basics of Eurojust such as the objectives, tasks, competences, composition, functioning and financing.

The second important legal instrument is Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime. This Decision introduced modifications to the provisions of financing the Eurojust, which entered into force 29 September 2003.

The third essential legal instrument is Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime. This Decision made several relevant modifications and introduced new institutions into the structural organisation of Eurojust.

The main provisions of these documents will be presented in the followings. In general, we can say Eurojust is a European, self-governing body of full-time judges, prosecutors and police officers, who assist national authorities in investigating and prosecuting serious cross-border criminal cases. It is directly responsible to the Council. The seat of Eurojust can be found in The Hague, Netherlands.

National members

Eurojust has one national member, seconded by each Member State, in accordance with its legal system, which means there are altogether 28 national members. A national member can be a judge, prosecutor or police officer. They have equivalent competencies. “It is upon Member States to decide who they will appoint for Eurojust, as well as from which national body these persons will come from, which powers they will keep within their home jurisdiction, and what their term of office will be.”³⁴ The majority of national members are currently prosecutors. Each national member can be assisted by one deputy and another person as an assistant. The length of a national member’s term of office is at least four years. The Member State of origin can renew the term of office. If a Member State wishes to remove a national member before the end of a term, it has to inform the Council before the removal and indicate the reason there for. In my opinion, this provision guarantees the national member’s independence and in accordance with the regulation that says Eurojust is responsible to the Council only. A national member can contact the competent authorities of his Member State directly and all information exchanged between Eurojust and Member States should be directed through him or her. In order to meet the objectives of Eurojust the

³⁴ Jiri Vlastník: *op.cit.*: 37.p.

national member has at least equivalent access to certain types of registers of his Member State as would be available to him in his role at national level. When a national member acts, the decision is taken by an individual. When functioning through the national member, Eurojust may ask the competent authorities to consider the following possibilities: undertaking an investigation or prosecution of specific acts; accepting that one of them may be in a better position to undertake an investigation or to prosecute specific acts; coordinating between the competent authorities of the Member States concerned; setting up a joint investigation team in keeping with the relevant cooperation instruments; providing Eurojust with necessary information to carry out its tasks.

Eurojust College

All national members form the Eurojust College, which means it is a collective organ. Each national member has one vote. In principle, they decide by majority vote, either simple majority or qualified two-thirds. The College is responsible for the organisation and operation of Eurojust. The College is structured in different teams dealing with various matters, from administration to all the different forms of organised crime or data protection. The College holds at least one ordinary meeting each week, regularly on Tuesday. Furthermore the College elects a President among themselves. The current President of Eurojust is Michèle Coninx. She was appointed as a President of Eurojust by the Council of Ministers of European Union following her election by the College of Eurojust in May 2012. In addition, Michèle Coninx is national member for Belgium at Eurojust and Chair of Eurojust's Counter-Terrorism Team. It is also interesting to mention that she was the Vice-President of Eurojust from December 2007 until April 2012. The President exercises his or her duties on behalf of the College and under its authority, directs its work and monitors the daily management ensured by the Administrative Director. The President on behalf of the College reports in writing to the Council every year on the activities and management, including budgetary management of Eurojust. Eurojust is represented by the President. The College can elect two at most Vice-Presidents, if it considers its necessary. The current Vice-Presidents are Francisco Jiménez-Villarejo, the national member for Spain and Landislav Hamran the national member for the Slovak Republic. When the College acts the decision is taken by a collective decision. When functioning through the College, Eurojust may ask the competent authorities of a Member State to take one of the same five actions detailed above as the national member. The situations in which Eurojust acts as a College are listed in the Eurojust decision: they concern cases where one or more of the national members concerned by a case dealt with by Eurojust

make a request for the College to act; or cases involving investigations or prosecutions that have repercussions at Union level or that might affect Member States other than those directly concerned; or cases involving a general question relating to the achievement of its objectives; or when otherwise provided for in the Decision. Every year, the College prepares an annual report on the activities of Eurojust.

From our point of view the acting of a national member constitutes the national feature of Eurojust, and the College constitutes the European feature of this organisation. The self-governing body of the Eurojust can differentiate it from other EU agencies that are led by a director appointed by the Commission. One of the weaknesses of Eurojust is that its decisions are not compulsory for the Member States. This fact is deriving from the feature of the activity of the Eurojust that is no more than facilitation of the international cross-border cooperation in criminal matters. The affected Member State can refuse to complete the request, and the only obligation is that the Member State must inform Eurojust about the reason for the refusal. The Member States do not have to give their reasons if doing so would harm essential national security interests, or would jeopardise the success of investigations under way or the safety of individuals. There is one sanction only, namely to release in the Annual Report the fact that the Member State refused a request.

Administrative director

The Administrative Director of Eurojust is appointed unanimously by the College. The term of office of the Administrative Director is five years, but it can be renewed. The Administrative Director can be removed from office by the College by a two-thirds majority. He or she works under the authority of the College and its President. He or she is responsible under the supervision of the President, for the day-to-day administration of Eurojust and for staff management. The current Administrative Director is Klaus Rackwitz who was taken up his duties on 01 October 2011.

Coordination meeting

In general, Eurojust holds strategic, tactical, coordination and marketing meetings. If Eurojust is to finance and/or organise such meetings, there must be a specific Eurojust interest, inter alia a strategic aim, a certain need for specific regional co-ordination in the EU or a particular marketing opportunity. In practice Eurojust exercises its arbitration role mostly through the organisation of “coordination meetings”.

The focus of a Eurojust coordination meeting is on a particular criminal case. The bilateral or multilateral coordination meetings are held in accordance with the Eurojust Decision and the Rules of Procedure as part of Eurojust's operational work to exercise its powers and to stimulate, improve and support cooperation and coordination, between national authorities, of the ongoing investigations and prosecutions in a specific Eurojust case.

The external participants in coordination meetings are prosecutors, judges, magistrates, police officers or others from the concerned national authorities dealing with the specific case.

Coordination meetings are usually decided by the national members involved in the particular case. The requesting national member presents the proposal at an internal meeting inside the Eurojust (so called Level II meeting) to the other national member(s) concerned. If a coordination meeting due to exceptional circumstances requires particular organisation or costs, the meeting is to be decided by the College on a case-by-case basis.

Importantly, the coordination meetings provide national authorities with the cross-border experience of Eurojust's prosecutors, judges, police officers and other experts. In 2013 Eurojust held over 200 such meetings, and they are very important part of the facilitation of the legal cooperation in criminal matters. This is not only because coordination meetings help resolve many practical issues which arise in a particular case. By bringing national investigators and prosecutors together with EU partners, such as Europol and OLAF, Eurojust's coordination meetings also allow a broader view of cross-border crime to be developed. This can have important consequences for fighting organised crime groups across the European Union.

Eurojust reimburses the costs of travel and accommodation of the participants from Member States, or from a third State. Coordination meetings are regularly take place in The Hague, at Eurojust premises. In exceptional cases coordination meetings could be held in the Member State concerned or in the third State. Real time interpretation is provided in a meeting to ensure equal treatment of the participants by providing them with the possibility to use their own language.

Coordination Centre

The tool to set up a coordination centre within Eurojust was developed in 2011, to coordinate simultaneous operations between judicial, police and, if need be, customs authorities in a

number of cases. In many regular Eurojust coordination meetings, national authorities come to an agreement to conduct joint actions.

The coordination centre ensures real-time transmission and coordination of information between authorities during a common action day of arrests, house/company searches and witness interviews.

On-Call Coordination

Eurojust launched the On-Call Coordination in 2011 in order to fulfil its tasks in urgent cases. It is the responsibility of each Member State to ensure that their representatives in the On-Call Coordination are able to act on a 24 hours per 7 days basis. The On-Call Coordination is contactable through a single contact point at Eurojust.

In technical terms On-Call Coordination means that Member States can contact Eurojust through a special telephone number. A call management system answers the call and semi-automatically forwards it to the competent On-Call Coordination representative who is on call at that special time. The case can then be explained in the caller's own language and appropriate action has to be taken by that On-Call Coordination representative.

Case Management System (CMS)

CMS means an automated processing system that supports coordination of Eurojust cases. One can store case related documents and personal information in CMS. Each case is represented in the database by a Temporary Work File (TWF). A TWF is a virtual dossier that holds data on criminal cases.

Owner can decide to keep your information visible to you only or share it with other CMS users. CMS facilitates interaction between CMS users involved in a case and notifies them about new developments using notification mails. CMS also facilitates organisation of meetings related to cases between CMS users as well as non-CMS users.

The background of EPPO

Member States report that every year, approximately €500 million of EU spending and revenue is lost due to suspected fraud. Unfortunately the actual amount of it is likely to be

significantly higher.³⁵ Figures on reported fraud cannot include fraud that is not detected, so the overall figure is estimated to be much higher.

These facts show that the current system does not protect the Union's financial interests sufficiently.

First of all, the existing EU bodies – OLAF, Eurojust and Europol – have no competence to conduct criminal investigations or to prosecute fraud cases.

Secondly, EU countries' criminal systems are different from each other and their powers stop at national borders.³⁶ Prosecuting offences against the EU budget is currently within the exclusive competence of Member States and no Union authority exists in this area. While their potential damage is very significant, these offences are not always investigated and prosecuted by the relevant national authorities, as law enforcement resources are limited.³⁷

All in all enforcement is often weak or deficient due to the absence of a European enforcement structure, the lack of continuity in enforcement action and the lack of an underlying common European prosecution policy. There is no centrally placed body that can deal with these obstacles and ensure continuity in the investigation and prosecution process.³⁸

According to the mentioned above in 2013 the European Commission suggested to establish a European Public Prosecutor's Office. Its exclusive task would be to investigate and prosecute and, where relevant, bring to judgement - in the Member States' courts - crimes affecting the EU budget.

The logic of the European Public Prosecutor's Office proposal is simple: If you have a "federal budget" – money coming from all EU Member States and administered under common rules – than you also need "federal instruments" to protect this budget effectively across the Union.³⁹

³⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better protection of the Union's financial interests: Setting up the European Public Prosecutor's Office and reforming Eurojust Brussels, 17.7.2013 COM(2013) 532 final

³⁶ European Commission, Press Release Database, MEMO:Every euro counts - Frequently Asked Questions on the European Public Prosecutor's Office

³⁷ Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, Brussels, 17.7.2013 COM(2013) 534 final 2013/0255 (APP)

³⁸ Commission Staff Working Document, Executive Summary Of The Impact Assessment, Accompanying the document, Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, Brussels, 17.7.2013 SWD (2013) 275 final

³⁹ European Commission, Press Release Database, Protecting taxpayers' money against fraud: Commission proposes European Public Prosecutor's Office and reinforces OLAF procedural guarantees, Brussels, 17 July

The legal basis of the proposal is Article 86 TFEU which says that EPPO must be established from Eurojust. For setting up it the document demands for a special legislative procedure. The Council needs to decide this unanimously after obtaining the consent of the European Parliament.

The proposal of the Commission regarding its main elements

First of all the exclusive competence of the EPPO would be to investigate the frauds against the Union's financial interests. This is why such cases can no longer be subject of administrative investigations by OLAF, or if they are, the proceeding must be transferred to the EPPO when the criminal suspicion arises.

Another important element of the office is the independence, accountability especially in connection with the appointments, dismissal procedures and serious misconduct.

The EPPO will be organised as a decentralised office. It will be found in all Member States, will have the right to act and will be integrated to their own judicial systems.

According to Article 6.5 of the proposal there shall be at least one European Delegated Prosecutor in each Member State, who shall be an integral part of the European Public Prosecutor's Office. European Public Prosecutor will have the authority to instruct the European Delegated Prosecutors on the ground in Member States. According to Article 6.6 of the proposal the European Delegated Prosecutors may also exercise their function as national prosecutors. It follows from the two cited provisions of the proposal that the European Delegated Prosecutor will be standalone Janus faced: prosecutor at a European Union level from one side and national prosecutor from the other side. Owing to the hierarchical connection and due to the fact that EP Prosecutor takes the final decision on prosecution help swift decision making and the efficient working.

Uniform investigation powers will be ensured, although the conditions and the exercise of these measures will be governed by national law. As the different rules regarding to the gathering of evidence often leads to problems the way of regulation will be that evidence gathered lawfully in one Member State shall be admissible in all Member States unless the fairness of the proceedings or the rights to defence are affected.

Another important element is that the rights of suspected persons, victims and witnesses shall be guaranteed through then Union legislation and national law, and by relying on national courts.⁴⁰

Reform of Eurojust

EPPO proposal is being presented with a reform of Eurojust as EPPO shall be created from it. The aim is to establish strong links between the two organisations through effective cooperation, sharing of information and resources. The reformed Eurojust will support the EPPO in the fight against the EU budget with providing administrative support services to the new organisation, such as personnel, finance and IT. For instance the EPPO will have the opportunity to use the IT infrastructure of Eurojust for its own cases. The details will be included in an arrangement between them. Today's theory is to improve the overall functioning of Eurojust.

Eurojust needs reform to overcome the deficiencies in the implementation of its present framework and should become more optional. It would be practical to distinguish operational and administrative tasks. Moreover the establishment of an Executive Board will assist the College with its administrative tasks.⁴¹

State of play

As for the proposal of the regulation, it obtained the consent of the European Parliament. Member States had reservations about the act of the Commission so the Council did not decide unanimously. If the view of Member States will not change a group of at least nine Member States may enter into an enhanced cooperation.⁴²

The United Kingdom and Ireland have not notified their wish to take part in the adoption and application of the proposed Regulation as provided under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on EU and to the Treaty on the Functioning of the EU.

⁴⁰Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Better protection of the Union's financial interests: Setting up the European Public Prosecutor's Office and reforming Eurojust Brussels,17.7.2013 COM(2013) 532 final

⁴¹European Commission, Press Release Database, MEMO: Every euro counts - Frequently Asked Questions on the European Public Prosecutor's Office

⁴²Article 86 TFEU

In accordance with Articles 1 and 2 of the Protocol on the position on Denmark, annexed to the Treaty on EU and to the Treaty on the Functioning of the EU, Denmark does not take part in the adoption of the proposed Regulation.

The Working Party on Cooperation in Criminal Matters (COPEN) started examining the text at its meeting on 19 September 2013 under the Lithuanian Presidency with a general exchange of views on each Chapter.

After 6 June 2014 the new draft included that the EPPO and the prosecutor office of the Member States have parallel competence in connection with the investigation of the crimes against the EU budget.

On 4 December 2014 the Council stated that most of the delegations have agreed on the fact that it was needed to be stricter rules as for the appointments, dismissal procedures of the EPPO prosecutors.

Balaton Declaration

On 17 May in 2014 the Prosecutors General of the Visegrad Group (Czech Republic, Hungary, Poland and Slovak Republic) adopted the Balaton Declaration on the establishment of the European Public Prosecutor's Office. The meeting - where this document was accepted - was held in Hungary, next to the Lake Balaton.

The Prosecutors General of the Visegrad Group express the necessity for an EPPO which will bring significant added value and will prove to be more effective than the present system. Besides this, according to the document it is essential that the establishment of the EPPO shall not cause a decline of efficiency in relation to domestic criminal proceedings, delays, extra costs nor a downturn of the standards of human rights. Moreover, the Prosecutors General of the Visegrad Group raise concerns about the fact that the structure of the EPPO is under discussion in the Council without knowing its future competencies. As for the structure it is underlined that it should be as simple as possible in order to guarantee prompt actions of European Delegated Prosecutors. Furthermore the question whether VAT fraud would fall within the competence of the EPPO or of the national authorities is still to be decided. Last but not least the Prosecutors General of Visegrad Group also emphasize the importance of the European Delegated Prosecutors having maximum procedural autonomy.⁴³

⁴³ Balaton Declaration On The Establishment Of The European Public Prosecutor's Office

The attitude of Hungary

At the meeting held in Hungary on 27 February in 2015 Vera Jourova (the European Union's Commissioner for Justice) was interested in the standpoint of Hungary in connection with the establishment of the EPPO and spoke in the support of the proposal. Minister László Trócsányi informed her about our assistance and emphasized the importance of the fight against corruption. The minister underlined that several structure and proceeding questions were waiting to be clarified. Apart from this he also mentioned that further discussions would be needed among the Visegrad Group connecting to the EPPO.⁴⁴

Meeting of Ministers of Justice of Middle-Europe

On 06 March in 2015 Czech Republic, Hungary, Poland, Slovak Republic, Slovenia and Croatia discussed their standpoint about the establishment of EPPO. All of them agreed with the aim of the organisation but expressed that the way of the establishment of it and the questions of proceeding needed more work.⁴⁵

⁴⁴ <http://www.kormany.hu/hu/igazsagugyi-miniszterium/hirek/trocsanyi-laszlo-es-v-ra-jourova-talalkozoja>

⁴⁵ <http://www.kormany.hu/hu/igazsagugyi-miniszterium/europai-unios-es-nemzetkozi-igazsagugyi-egyuttmukodesert-felelos-allamtitkarsag/hirek/kozep-europai-igazsagugy-miniszterek-kepviseloi-egyezettettek>

Conclusion

All in all it can be stated that several steps are being taken in order to establish the EPPO. Although the idea did not come out this time first we are convinced that in the last two years were the most major measures taken in order to reach the planned aim as soon as possible. In our opinion it is time now to finally block crimes against the EU budget.

We have to take into consideration that it is not enough to investigate these crime types in the competent Member States only. Unfortunately protecting EU budget from fraud is not always in the interest of national prosecutors or simply they are not able to scout these crimes. Added to this cooperation between countries is difficult due to the different criminal law systems, language barriers and time consuming legal assistance procedures. Lack of resources is also a serious problem as Member States do not have the same financial background so it can result in inefficient proceedings. Last but not least we have to take into consideration the possibility of a potential EU decision that only those Member States grant financial support that assist controlling the use of it.

But on the other hand it is understandable that Member States protect their own sovereignty. They are afraid that the establishment of the EPPO would weaken their own prosecutor's office concerning its functioning and structure. Further dismay would be if their domestic laws should be changed because of the new organisation.

Another important question is the professional abilities of the prosecutors working for the EPPO. Special law training would be necessary for those who will protect EU's financial interests focusing on law materials applied at EU level. They need special knowledge in order to fulfil their duty properly due to the fact that cross-border investigations are more complex.

In conclusion only future can tell us how useful can be such a new organisation in case Member States decide that way. However several countries have reservations about the EPPO, experts of the topic predict that sooner or later the idea will come true. These experts hope that finally the EPPO will be established at least with the form of an enhanced cooperation.