



**DIRECTORATE GENERAL FOR INTERNAL
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**POLICY DEPARTMENT
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS** 

Justice, Freedom & Security

The inter-agency cooperation and
future architecture of the EU
criminal justice and law
enforcement area

Presentation by

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Introduction (1)

- Several agencies and bodies coexist within the AFSJ, each with its own mandate and expertise.

=> Focus on the following agencies and bodies of the EU criminal justice area:

Europol, Eurojust, the European Judicial Network (EJN), the European Anti-Fraud Office (OLAF) and the future European Public Prosecutor's Office (EPPO)

Introduction (2)

- Complementarity, consistency and good articulation between these agencies and bodies is crucial to develop a multidisciplinary approach to crime.
 - Overlaps and grey zones between their mandates are inevitable and may present advantages.
 - Nevertheless their smooth cooperation is required and supposes that they work hand in hand for the realisation of common goals, and they respect each other's mandate and expertise.

Introduction (3)

- Difficulties to establish such complementarity:
 - Differences between them in terms of:
 - Generations: well-established vs. justifying their added-value
 - Logics: supranational logic for OLAF and the EPPO / intergovernmental for EJM, Eurojust and Europol (services providers)
 - different professional cultures (e.g. adm., police, justice)
 - Structures, resources and budget
 - Impact of differences between national criminal justice systems (e.g. different distribution of competences)
 - Lack of a consistent vision of the EU area of criminal justice: police and judicial cooperation treated by different Directions/Services in the Commission and the Council.
 - Importance of personal relations

Introduction (4)

- Limited and vague provisions in their respective legislative instruments → in practice, interagency cooperation is largely left to the EU agencies/bodies themselves.

=> The study analyses the current state of play and foreseeable developments in their relations

- Identification of good practices and difficulties, and
- where possible, suggestion of ways of improvement.

Outline of the study

- **First part – Interagency cooperation in the fight against serious cross-border crime**
 - Cooperation between Europol and Eurojust (I)
 - Cooperation between Eurojust and the EJM (II)
- **Second part – Interagency cooperation in the protection of the Union's financial interests**
 - Cooperation between OLAF and Europol or Eurojust (I)
 - The creation of the EPPO: an uncertain scenario (II)

FIRST PART

**Interagency cooperation in the fight
against serious cross-border crime**

I. Europol and Eurojust (1)

- Whereas Europol was established under the 3rd pillar of Maastricht, has a hierarchical structure and is guided by law enforcement pragmatism, Eurojust was established under the 3rd pillar of Amsterdam, has a collegial structure and a strong judicial character. Different resources.
- But “sister agencies”: common material scope of competence, the fight against serious transnational crime & similar relationship with national authorities (service-providers)
- Complementarity of their tasks: cooperation between law enforcement services and judicial authorities essential both at national and EU level → Implies establishment of close links

I. Europol and Eurojust (2)

- **Formal cooperation**

- Provisions in their respective legislative instruments (few in the current Council Decision, more in the proposals under negotiation)
- Detailed elements in the 2nd Cooperation Agreement concluded in 2010

- **Practical cooperation**

- Bilateral cooperation has developed and improved over time
- Close and regular cooperation illustrated by numerous joint initiatives and success stories
- However, some problems still present → Four categories identified

I. Europol and Eurojust (3)

● Coordination of judicial authorities

- Under the TFEU, Eurojust coordinates judicial authorities, while Europol coordinates law enforcement authorities.
- However, in practice the allocation of tasks, particularly in the investigation stage is complex. This especially because of the diversity of the national criminal justice systems → Certain flexibility required => Grey zones, which might create tensions between agencies
- Tensions increased due to wording of Art. 4 §1 c) Council's General Approach on Proposal for a Regulation on Europol
- Importance to respect the allocation of tasks made in the Treaties, and to handle the needed flexibility in good faith (mutual respect of each other's expertise and *raison d'être* - mutual obligation to inform each other about activities potentially overlapping with the other's expertise)

I. Europol and Eurojust (4)

● Joint Investigation Teams

- A mixed instrument involving both law enforcement and judicial authorities
- Both Europol and Eurojust received competences dealing with JITs - support provided by both Eurojust and Europol (with some differences). JITs often mentioned as good example of cooperation between them.
- However tensions because mention of funding of JITs in both draft Regulations → Some advantages v. Fear of marginalisation of judicial authorities (see imbalance as to funding resources) & risk of double funding
- Need for a mechanism avoiding double funding (obligation of mutual information - establishment of a centralised service channelling funding requests) – Need to correct imbalance as to funding resources

I. Europol and Eurojust (5)

- Exchange of information
 - Cooperation in this field complicated, in particular because of the “owner principle” implying that information sharing can only go as far as MSs allow it.
 - Improvement over the years: see Eurojust’s association to most of Europol’s focal points
 - Future regulations should foster exchange of information further: see Art. 27 Europol Regulation and 40 Eurojust Regulation (Council’s General Approach: indirect access on the basis of a hit/no hit system). Reflects the evolution of mentalities and the trust earned by Eurojust.

I. Europol and Eurojust (6)

- Analysis of information
 - Analysis of information for operational and strategic purposes at the core of Europol's mandate
 - Recent development of Eurojust's own analytical capacities, for operational and strategic purposes
 - Fear of an overlap → But content and purpose of the analysis seems different (Eurojust's analysis "judicially oriented") → Pedagogy needed to highlight the clear differences that exist with regard to the information analysed, the methods used and the objectives pursued.

II. Eurojust and the EJM (1)

- Both entities have different history and structures:
 - EJM a network of 'first generation', with a limited institutional dimension
 - Eurojust a 'second generation tool', reflecting an increased level of integration
- But they have a similar judicial logic and a common objective, i.e. supporting and strengthening judicial cooperation in cross-border cases
- Main 'problematic' issue = the allocation of cases between both entities

II. Eurojust and the EJM (2)

- Silence of the texts on criteria to allocate cases
 - In some MSs, national guidelines: ‘simple’ bilateral cases for the EJM, complex and/or multilateral cases for Eurojust
 - But, most of the time, flexibility and allocation on a case-by-case basis depending notably on the performance of the one or the other in the MSs and/or on personal contacts
- Among the solutions
 - Clarification in the future Regulation on Eurojust? Difficult
 - ENCS + improvement of mutual knowledge and contacts
 - better training (see EJM-Eurojust paper on “assistance in international cooperation in criminal matters for practitioners”)
 - Adoption of guidelines at EU level

Second Part

**Interagency cooperation in the
protection of the Union's financial
interests**

I. Cooperation Between Olaf and Europol or Eurojust (1)

- OLAF's key role: EU body in charge of carrying out *administrative* investigations into irregularities affecting the EU's financial interests, both internally and externally.
- OLAF's investigations aim at detecting administrative irregularities but also at collecting information to establish if a criminal offence has been committed. OLAF is also competent to coordinate national investigations. BUT OLAF has no prosecutorial power...
- Cooperation with Europol and Eurojust concerns criminal cases involving two or more Member States
- Common field of intervention include, inter alia:
 - customs fraud, particularly smuggling (of cigarettes) and counterfeiting
 - tax evasion cases, notably VAT carousel fraud cases

OLAF and Europol (1)

- Administrative arrangement concluded in 2004, currently under review.
- Issues
 - Lack of mutual understanding between OLAF and Europol
 - Exchange of information - OLAF has no access to SIENA (Europol's secure communication channel), nor to Europol's focal points.
 - Analysis of information – Europol has limited access to OLAF's information when preparing its strategic analysis

OLAF and Europol (2)

- Improvements foreseeable in the close future:
 - New Cooperation Agreement expected in the course of 2014, with detailed provision on information exchange and access to SIENA
 - Future Europol Regulation – depending on the compromise between the EP and the Council, OLAF may be granted indirect access to Europol's databases on the basis of a hit/no hit system.

OLAF and Eurojust (1)

- Overlap in the coordination of judicial authorities in PIF cases → a troubled relationship from the start
- Among the initiatives to improve their cooperation
 - Practical Agreement signed in 2008, requiring OLAF to inform Eurojust asap of any case involving judicial cooperation between 2 or more Member States, and of any case concerning the Community
 - Establishment of a secure communication system between the two entities
 - Agreement in 2011 on criteria for the selection of common cases
 - Agreement on a “common mission” approach to cases where administrative investigation requires judicial follow-up

OLAF and Eurojust (2)

- Progress is noticeable (examples of fruitful cooperation), but the need to strengthen casework cooperation is still obvious.
- Possible improvement in the 2013 OLAF Regulation: Art. 13 foresees the transmission of relevant information to Eurojust when:
 - Eurojust may support and strengthen coordination and cooperation between national authorities
 - grounds for suspecting any illegal activity affecting the Union's financial interests in the form of serious crime

II. Creation of the EPPO : an uncertain scenario (1)

- Its creation will certainly affect interagency relations in the field of PIF, but the early stage of negotiations impedes a detailed analysis of the likely cooperation between the EPPO and its counterparts.
- Among the key issues essential for the interagency relations:
 - material scope of the EPPO's competences (both as to the definition of PIF and as to exclusive/no exclusive competence)
 - the EPPO structure (collegial structure?)
 - the number of participating Member States
- Few indications of their future cooperation in the Commission's proposals

II. Creation of the EPPO : an uncertain scenario (2)

- EPPO and Eurojust => Judicial logic but different levels of legal integration
- Most sensitive question: exact meaning of “from Eurojust” (Art. 86 TFEU)
 - ⇒ According to the COM proposal, the EPPO would rely on Eurojust for administrative and management matters BUT on a zero cost basis (?) and located where (?)
 - ⇒ 3 potential models :
 - ⇒ Eurojust would be in charge of the budget of the EPPO. The EPPO would not have its own staff.
 - ⇒ 2 bodies/2 budgets/2 staffs but use of administrative facilities of Eurojust by EPPO and then reimbursement
 - ⇒ 2 bodies/2 budgets/2 Staffs but shared services (ex: IT services)

II. Creation of the EPPO : an uncertain scenario (3)

⇒ Other structural link? Eurojust national members = European Prosecutors or Eurojust national members = European Delegated Prosecutors or EPPO associated to the Eurojust College or at least integrated in the Management Committee...
?

⇒ Beyond this, need to reflect on Eurojust-EPPO cooperation because Eurojust will anyway continue to play a role in PIF cases after the establishment of the EPPO (see relations between non participant MSs, relations between the latter and the EPPO, between all MSs because EPPO's exclusive competence in PIF has been excluded by the Council, between all MSs concerning ancillary/connected offences, between all MSs concerning other offences related to the same person, and as to the cooperation of the EPPO with third countries).

II. Creation of the EPPO : an uncertain scenario (3)

- EPPO and OLAF
 - Quite sensitive question – raises the question of the future of OLAF. Will surely still exist but part of its personnel could be transferred to the EPPO (importance of such transfer? Who? ...)
 - Cooperation will be needed but rather vague provision in the EPPO proposal on the conclusion of a cooperation agreement... Too early to elaborate on this issue
- EPPO and Europol
 - Cooperation will be needed. COM proposal only foresees a “special relationship” entailing exchange of information. Too early to elaborate on this issue

Conclusions

- Extremely sensitive topic
- Importance of the current negotiations as an opportunity to clarify certain elements
- Importance of pedagogy, of mutual knowledge, mutual contact and of training at EU and national levels to reduce confusion and tensions
- Importance of the role of the European Parliament:
 - EU institution best placed to provide a comprehensive and consistent vision of the EU criminal justice area => Need to ensure consistency between the regulations under negotiations but also to assess the needed balances between law enforcement and judicial authorities at EU level
 - Involvement in the monitoring and assessment of the interagency relations