



# Annual Report 2003



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## FOREWORD

I am delighted to present the Annual Report of the College of Eurojust for the year 2003. This is the second Annual Report prepared by the College in accordance with Article 32(1) of the Eurojust Decision and gives information about our first year of work in our premises in The Hague. Although much work remains to be done, 2003 has been a year which has seen significant progress in establishing our organisation and developing its work within the borders of the European Union and beyond.

The College hopes the report will be circulated widely and read by all who have an interest in the fight against serious cross border crime.

In the past twelve months we have established our organisation in The Hague and developed an infrastructure to enable us to be effective. The 15 national members and their assistants started 2003 with only an Administrative Director and three other permanent staff. At the end of December there were 29 permanent staff in post but only part of the proposed facilities were in place. The Secretariat of the European Judicial Network has successfully taken up its work inside the Secretariat of Eurojust as an independent part of the Eurojust Secretariat under the Decision and the College is confident this will benefit future cooperation.

In 2003 the number of case referrals to the College increased by 50% on the figure for 2002. This is satisfying since it shows that the national judicial authorities are gaining more confidence in Eurojust which is essential for Eurojust's efficiency. It is also pleasing that there was an increase in the number of multilateral cases and in the seriousness and gravity of the cases referred.

In our Annual Report for 2002 we noted that our work in that year had been restricted by the lack of our own conference facilities. Unfortunately we encountered the same situation during the past year as the work to build the conference and meeting room facilities, which are so important to us, was not finished by the end of 2003. We look forward to the completion of the necessary works which will allow us to begin to achieve the objectives and tasks assigned to us. Although we could not achieve our full potential in this regard we were able to hold two very beneficial strategic meetings in Brussels on significant casework topics. The first was on fundamentalist terrorist activity and the financing of terrorism and the second dealt with the trafficking of human beings. A more detailed analysis of the figures for case referrals and the strategic meetings is contained in the Casework chapter of this report.

The most significant public event of the year was the ceremony to mark the Inauguration of Eurojust in The Hague which took place on 29 April 2003. The College was delighted at the high level of attendance by Ministers of Justice and Home Affairs from the European Union and from Accession States, leaders of European institutions and by senior prosecutors and officials from across Europe.



This year also saw the first Eurojust Practitioner's Seminar: *"Deciding Which Jurisdiction Should Prosecute"* which took place in The Hague's National Congress Centre on 18 and 19 November 2003. Over 60 experienced delegates attended representing practitioners from all the European Union member states and accession states as well as from the European Judicial Network, Commission and the Council Secretariat. A number of academics who have written about problems in this field also made useful contributions. The seminar enabled Eurojust to produce some guidelines to apply when dealing with such problems. The seminar discussed the topic which is part of Eurojust's work in deciding when to ask one jurisdiction to forego prosecution in favour of another under Articles 6 and 7 of the Eurojust Decision. We plan to hold similar themed seminars in our calendar annually.

The past year saw Eurojust developing further its relationships with a number of bodies such as OLAF and Europol. Additionally discussions with Norway are well advanced and we hope that the negotiations will be concluded in the early part of 2004 allowing Eurojust to sign its first formal agreement with a state outside the European Union.

The enlargement of the European Union is an exciting challenge for Eurojust. During 2003 we have developed closer relations with the Eurojust contact points in the accession states. On 16 and 17 May 2003 we organised a meeting for them to visit our premises and meet the College and its staff. We have also written to each of the Ministers of Justice and Home Affairs in the accession states asking them to nominate their national member of Eurojust as early as possible. This will help us to resolve the organisational as well as the personal and practical issues that will arise as the accession states join Eurojust and come to work with us in The Hague. In early 2004 we will continue these preparations to ensure a smooth transition as the Eurojust College increases from 15 to 25 national members.

We were pleased that the final member of the Eurojust Joint Supervisory Body (JSB) was appointed in June 2003. This appointment permitted our JSB to meet for the first time in July. We have also been able to appoint our Data Protection Officer who took up post in November and has already begun work on implementing a robust data protection regime within Eurojust.

We have made substantial progress to provide better support and facilities for prosecutors and investigators dealing with cross border cases. This is shown by the increasing numbers of case referrals and the "repeat business" which investigators and prosecutors working in this area are referring to us.

The College was also pleased to hear the decision made at the EU meeting of Heads of State and Government in Brussels on 13 December 2003 which confirmed The Hague as Eurojust's permanent seat and so removed uncertainty about our future location.

On a more cautious note at the end of 2003 Eurojust was one of four European Union institutions whose leaders were sent letter bombs by extremists. Our security staff identified the device before it was opened and happily no one was injured.

There is still much work to be done but over the past twelve months the first tentative steps have been taken in our new home. We believe we have laid the foundations to provide effective and efficient support and facilities to the practitioners dealing with serious cross border crime. During the next year we need to develop and install the vitally important secure methods for the communication and processing of data. This will allow national competent authorities to transmit and receive sensitive information by secure means to and from their national members.

The College does not feel that Eurojust's capacity to deal with casework is being fully exploited. Many significant multilateral cases, which are being dealt with by authorities in the member states, are not being referred to Eurojust. We feel that in many of these cases Eurojust's contribution would be very beneficial. Promulgating the message that Eurojust has the capacity to add value in the fight against organised cross border crime remains a key part of our work.

A number of member states still have to change their legislation and so have not met the deadline for implementation of the Eurojust Decision. We feel sure this has had a negative effect on Eurojust's casework. In particular, it is necessary for all national members to have access to all the information which is required for the exercise of their duties. Some national members have had very few cases referred to them by their national competent authorities; we feel this may often be due to the absence of implementing legislation.

There is a need for clarity and certainty about the competence of each national member and an assurance that this competence is clearly defined in his or her domestic law. Several national members are still without this clarity and certainty and so their authority to act in their home states is restricted.

Whilst the College accepts that domestic legislative programmes are busy we ask that, where their domestic law requires it, member states give priority to providing the legal framework necessary to give Eurojust's national members the authority to act in accordance with the Eurojust Decision. This will enable the College to achieve the success and efficiency which JHA Ministers expected when they initiated the Eurojust concept at the Tampere summit in 1999.

In December 2003 we bade farewell to two national members. We were very sorry to say "good-bye" to Vice-President of the College and national member for Sweden, Björn Blomqvist, who is to take up a senior position in the office of the Swedish General Prosecutor, and to the national member for



Denmark, Anders Linnet, who became the Chief Constable of Greenland. The College thanks Björn and Anders for their work and wishes them well in their new roles. We are very pleased to welcome their replacements into the College: Solveig Wollstad from Sweden and Johan Reimann from Denmark.

MICHAEL G KENNEDY  
President of the College  
February 2004

# 1 THE STRUCTURE OF EUROJUST

Eurojust is composed of 15 national members, one seconded from each member state in accordance with its legal system, being a judge, prosecutor or a police officer of similar competence.

Seven member states have appointed assistants to help their national members. Some assistants are based in The Hague with their national member whilst other member states have appointed assistants who are based in their home country. These assistants visit The Hague to substitute or deputise for their national members or when otherwise required to do so.

In 2002 we established four committees to ensure that the wide range of topics to be handled by national members could be divided amongst the College and so handled more effectively in smaller groups. The committees, dealing with Casework, Strategy, Communications and Evaluation continued their work in 2003 and we remain pleased with this method of working. However, during 2004 as Eurojust's infrastructure and administrative support grows and as the national members increase from 15 to 25, we expect to review the committees and their working methods in order to identify and implement the most efficient working arrangements in our changed circumstances.

The Administration Group continues to operate under the control of the Administrative Director who, in accordance with the Eurojust Decision, reports to the College through the President. Administrative and support issues are described in more detail in the chapter later in this report dealing with Administration.



## 2 THE DECISION, PARTNERS AND THE LEGAL ENVIRONMENT

To fight successfully against organised cross border crime requires efficient linkages between a series of intelligence gathering, analytical, investigative, prosecutorial and judicial processes. The European Union has put in place a range of decisions, instruments, legislation and a JHA *acquis* which, if fully harnessed, could have a significant impact on the fight against cross border crime.

As one of those instruments Eurojust believes that close co-operation and co-ordination with Europol and between police and judicial authorities are vital factors for success. Although different legal systems in the EU sometimes discourage close working, too often when it is possible, police and judicial authorities lack the desire to work with one another and so fail to capitalise on the potential benefits of powerful organisations working more closely together. In the fight against serious cross border organised crime we must remember that:

*Without intelligence there will be no information. Without information there will be no evidence. Without evidence there will be no prosecution. Without prosecution there will be no trial and of course without a trial there will be no prospect of convicting criminals.*

These are linked processes and achieving successful results requires an integrated approach. Europol and Eurojust must provide a lead for police and judicial authorities to work closely together with due regard to their responsibilities and to the human rights of individuals.

### European Judicial Network (EJN)

The excellent and privileged relationship between Eurojust and the European Judicial Network (EJN) has been enhanced during 2003. During 2003 the EJN Secretariat was firmly established in the Eurojust premises in The Hague. Mr Angel Galgo, a Spanish judge and EJN contact point was appointed as secretary. A webmaster and secretary have also been engaged. The Eurojust Administration has also given support to assist in the implementation of the EJN budget. The EJN Secretariat meets regularly with the Eurojust Administration and the College. These arrangements work well allowing the EJN the independence it requires but developing a mutually beneficial and supportive atmosphere. During 2004 it will be important to work out how the meetings and projects of the EJN can be supported by Eurojust. A clearer definition of the specific roles of the two bodies may also be needed in the future. Some steps in that direction were taken during the Danish Presidency.

During 2003 co-operation and consultation between the College and the EJN has continued. National members for United Kingdom, The Netherlands, France, Greece and Italy, have attended EJN meetings in Athens, Rome and Brussels at the invitation of the Network.



Members of the College frequently work with EJM contact points on cases. Approximately 25 mainly bilateral cases have been referred to the EJM by Eurojust national members. Similar numbers of cases have been referred to Eurojust by EJM contact points. We would also report that several EU states have appointed liaison magistrates, many of whom also serve as EJM contact points, and Eurojust national members have developed comparable relationships and systems with them for case referral. Many countries that have implemented the Eurojust Decision have appointed an operational correspondent who is also a contact point for the European Judicial Network.

## Europol

We reported last year that Europol is one of Eurojust's leading partners in the European Union's fight against organised crime. It is important that the investment made to create both Eurojust and Europol produces a significant return.

At the end of 2003 after prolonged negotiations, Eurojust concluded a draft agreement with Europol to enhance and facilitate co-operation between the two bodies. The draft agreement was submitted to the Council for approval in December 2003. We hope the agreement can be approved and fully implemented as quickly as possible although we acknowledge that this must await the approval of Eurojust's rules for the processing of personal data and the completion of technical and organisational arrangements to provide appropriate levels of security.

Whilst the College is pleased that an agreement has been concluded, there is disappointment that the negotiations have not produced a more comprehensive outcome. The different structures of Eurojust and Europol have led to the negotiation process being more bureaucratic than we would have wished. The College sees this draft as a first step which it hopes will be implemented quickly but leading to a more ambitious agreement in the medium term. One example of a more positive approach would be to enable the rapid use of the analytical work file (AWF) by prosecutors, which we feel could enhance the communication of valuable data to Europol by national authorities. The cumbersome procedure for Europol to set up an AWF in a case dealt with by Eurojust was disappointing. More importantly closer collaboration between Eurojust and Europol is required in other operational activities. The setting up and support of Joint Investigation Teams (JITs) together with competent authorities in the member states should help to demonstrate our capacity to work together more effectively.

We are pleased to report that the two organisations have continued to develop a close working relationship. Invitations have been made asking representatives to participate in meetings of common

interest where their respective experience and expertise can add value. Examples include meetings on terrorism, on fraud in time-share investments, and on the trafficking of human beings. This allows broad discussion on the opportunity to open analytical work files at Europol to support the investigations and, where needed, to reflect on the best place to prosecute any offences.

For the coming year Eurojust has decided to try to improve co-operation with Europol and to find ways to avoid excessively long delays and operational overlaps and to be able to benefit from the analytical work files prepared by Europol. An increased exchange of information will enable more meaningful reports to be prepared and better communication concerning topics related to the fight against organized crime. Many Eurojust national members are developing closer contacts with their national desks at Europol particularly with a view to avoiding the duplication of work, but also to avoid action facilitated by one organisation being prejudiced by action already being taken through the other organisation. Eurojust would encourage all national authorities to allow their national members to develop stronger working relationships with their compatriots in Europol.

In our Annual Report for 2002 we mentioned that one member state instructed its national member to contact his counterparts at Europol only in an emergency. We are pleased that shortly after the Annual Report was published this instruction was rescinded.

### **Relationship with OLAF**

Eurojust maintains its desire to work closely with OLAF and in particular to coordinate investigations and prosecutions affecting the financial interests of the European Union. Eurojust has noted with interest the extent to which member states have legislated to give effect to Article 26(4) of the Decision to ensure that the national members of Eurojust are regarded as a competent authority for the purposes of investigations conducted by OLAF. Some member states have expressly designated their national member in this respect, but most states have not done so and it is not clear that it will be necessary for them to do so.

On 14 April 2003 a Memorandum of Understanding (MOU) was signed by Eurojust and OLAF to give better effect to Article 26(3) of the Eurojust Decision which provides that the two bodies should establish and maintain close operational co-operation. Immediately after signature of the MOU, Eurojust and OLAF successfully collaborated in a small number of smuggling cases notably involving Spain, Portugal, Belgium and Sweden. The MOU had been in place for several months when the absence of further significant practical co-operation became a matter of concern. Eurojust and OLAF



decided to commission a small group, drawn from both organisations, to study the impact of the MOU and to suggest ways in which the professional relationship might be enhanced. This group is due to report and make proposals early in 2004.

### **The Implementation of the European Arrest Warrant**

Eurojust is confident that the timely implementation of European Arrest Warrant (EAW) will be an important factor to enhance the effectiveness of judicial co-operation within the European Union. The Framework Decision of 13 June 2002 created the EAW and in it member states made a commitment to have the provisions implemented in their national legislation by 31 December 2003. By the end of 2003 only eight member states had their legislation in place.

The provisions creating the EAW give Eurojust two specific operational roles to play in assisting with the practical implementation of the new procedures.

First, when multiple requests are made in respect of the same fugitive Eurojust, if asked, can give advice on which warrant should take priority. Eurojust sees this responsibility as a natural extension of its role as a facilitator of judicial co-operation. In many ways it is a responsibility which runs parallel to Eurojust's power to make a request asking one member state to forgo action in favour of another state which is in a better position to investigate or prosecute. Cases of competing priorities are typical situations where co-ordination is needed and so fall neatly within the main tasks of Eurojust.

Secondly, where in exceptional circumstances an executing state cannot observe the strict time limits set out in the Framework Decision, the failure to comply is to be reported to Eurojust. As strict time limits for action are one of the key features of the new arrest warrant Eurojust looks forward to playing its role in this regard.

We encourage domestic authorities to inform us on these issues and we expect that future Eurojust Annual Reports will contain special paragraphs commenting on these matters and providing an insight into the effectiveness of the new warrant.

During 2003 national members have given presentations on the EAW to explain Eurojust's role. The College is very willing to continue providing guidance, to promulgate good practice and to act as a centre of expertise as the provisions are implemented in practice across the enlarged European Union. We anticipate convening a meeting for practitioners on issues and problems relating to the operation of the new EAW towards the end of 2004.

## Joint Investigation Teams

The Eurojust Decision gives power, whether acting through its national members or as a College, to ask the competent authorities of member states to consider setting up a Joint Investigation Team (JIT).

In view of these powers Eurojust was keen to assess its ability to stimulate the use of JITs. The casework committee prepared a questionnaire to determine the position in each member state with regard to implementation of JITs in national legislation, the practical way in which they will operate in each member state and the role expected of Eurojust in JITs. The responses received reflect the position as it was between July and November 2003 when most member states were still in the process of preparing their legislation.

It is still much too early to provide a comprehensive evaluation of JITs. On the basis of answers received JITs will operate in most member states exclusively under the overall direction of a judicial authority, whilst in other member states the effective day to day team leader will be a police officer. The approval of the Ministry of Justice, a judicial authority or the Ministry of Interior will be necessary in some member states to create a JIT.

The participation of Eurojust national members in JITs is dependent on the powers which are to be conferred on them by national legislation in accordance with the Eurojust Decision. In member states where legislation is not anticipated, Eurojust's involvement will be decided on a case by case basis and will probably be of a supportive nature.

Although competent authorities in several member states are in the process of negotiating to establish a JIT, Eurojust is not aware of any formal JIT having been established under the new rules at the time we were preparing this report. Some national members have received referrals about the possibility of setting up a JIT and at present Eurojust is aware of at least one negotiation concerning the establishment of a JIT on human trafficking involving several member states and one non-member state. Eurojust is taking part in the preliminary work and we hope to be in a position to report more fully on this in our annual report for 2004. In addition, it would seem in the future natural that Eurojust be informed of the establishment of all JITs in the European Union in order to be able to fulfil its co-ordinating role.



## Implementation of the Eurojust Decision

The Eurojust Decision was to have been implemented in member states by 6 September 2003 and if required legislation should have been in place by that date. It is disappointing that several member states who planned to adapt their national legislation have still to do so.

The powers that member states have given to their national members vary considerably. It is important that there is consistency of competence amongst the members of the College as any lack of consistency of powers amongst the national members has the potential to undermine the effectiveness of the College. This will always mean that the College can only be as strong as its weakest link. It also seems clear that the level of aspiration for Eurojust differs in member states. It is not easy to be effective throughout the EU when national members' actions are slowed down by lack of powers vested in their colleagues.

Direct contact between a national member and all the competent authorities in his or her member state is indispensable for swift and efficient work. It would also add to effectiveness and efficiency if all national members could be given the competence to receive and issue Letters of Request.

In general the national member must be linked to the prosecutorial system in his or her country in a functional way. Another obstacle preventing Eurojust from functioning at its greatest capacity is the fact that most member states have not implemented the EU Convention of 29 May 2000 on mutual legal assistance in criminal matters together with its amending protocol of 2001 and the Framework Decision on Joint Investigation Teams.

A free flow of information to and from Eurojust without any unnecessary obstacles is also crucial for Eurojust to enable it to fulfil its objectives.

## Data Protection Rules and the E-POC Database Project

The processing of personal data and data protection are crucial issues for Eurojust because they can influence the organisation's performance.

In order to achieve its objectives Eurojust needs comprehensive information on serious cross border crime, including details of those persons who are subject to criminal investigations and/or prosecutions. It is also necessary for Eurojust to deliver operational efficiency whilst at the same time ensuring that fundamental human rights are protected. The Council Decision setting up Eurojust deals with these matters in some detail.

The Eurojust Decision sets out data protection and security measures but Eurojust is not operating within a legal vacuum because other international and European data protection instruments already apply to Eurojust's activities, covering, for example, provisions in the Treaty on the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Additionally, the Charter of Fundamental Rights of the European Union, although not yet binding, may have some impact. Furthermore, the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data 1981 is especially important as the Eurojust Decision sets it as the benchmark against which the level of data protection within Eurojust should be measured.

Eurojust has appointed a Data Protection Officer (DPO) who took up post in November 2003. The DPO has been given priorities to review current data protection procedures, to prepare and establish a provisional data protection regime and to draft data protection rules to be agreed by the College and submitted to the Council for approval by mid-2004.

Currently, in the absence of specific rules on data protection, the national members are adopting basic organisational arrangements, including physical security measures and working methods to ensure the handling of personal data complies fully with the legal rules which are in force and in particular with the Eurojust Decision. Security of data is very important and it is vital to ensure adequate protection of personal data in relation to operational work. This means that the specific data protection rules shall guarantee a level of protection at least equivalent to that provided for in the Council of Europe Convention of 1981.

The Eurojust Joint Supervisory Body (JSB) on data protection is comprised of three members rotating with EU presidency and met several times during the last six months of 2003. The JSB offered helpful guidance to the College prior to the appointment of the DPO. Eurojust will have developed general data protection and security guidelines which will be presented to the JSB when it meets with the other 12 nominated members for the first time in March 2004.

The second stage of the process is to draft comprehensive rules, including more detailed provisions to provide technical and security measures. These rules will reflect the results and input received both from the E-POC database project and from the internal discussions regarding the new filing system and related issues. Drafting the data protection rules and designing a database system are the main priorities.

The development of data protection rules is linked to a range of ongoing activities such as the provisional filing system, to organise case files more efficiently; the building of the database system; and the organisation of work and the negotiation of agreements with Europol and third countries. It is important to progress these activities in parallel because of their obvious connections. With these objectives in mind, Eurojust has an advisory role as a final user in association with a project



known as E-POC, which is partially funded by the EU Grotius II penal programme. The partners in the project are led by Italy with support from the French, Romanian and Slovenian Ministries of Justice. The project is being developed from work and software solutions devised to create an information system for Italy's Direzione Nazionale Antimafia. The main objectives are the delivery of a feasibility study to define a software system to support the tasks performed by Eurojust, to exchange information and to develop a corresponding software prototype.

Preparatory work done during the year has defined our basic requirements and a structure for the computer system. The project will also enable us to improve the working methods and efficiency of Eurojust.

The database we envisage will provide a capacity to create temporary work files for the individual use of national members including information related to cases under investigation or being prosecuted by national authorities. It will also provide the possibility to create an index of data with references to temporary work files containing personal data and non-personal data. The system will automatically identify possible links between different cases enabling national members to work better together.

The potential structure of temporary work files and a data index are being analysed and developed in accordance with the existing rules, with special consideration given to the security of data.

During 2003 a number of important steps relating to data protection were taken:

- Preparatory work to draft the data protection rules of procedure was concluded which took into account the development of Eurojust;
- The functional analysis of the database was concluded allowing the technical design of the system's prototype to begin;
- The first meetings of the JSB took place;
- The DPO was appointed and become involved in this important work; and
- This work should lead to the final draft of the data protection rules being prepared by the middle of 2004.

### **Further Institutional Developments**

In the coming year Eurojust will look forward to the conclusion of the Convention on the future of the European Union. Eurojust expects the new Treaty will clarify its role operationally in terms of the investigations and prosecutions in the European Union. It is ready to play its part in the fight against serious organised cross border crime and in creating an area of freedom, security and justice in partnership with other EU organisations, especially Europol.





### 3 CASEWORK

The Provisional Eurojust Annual Report for 2001 and the Eurojust Annual Report for 2002 identified a number of impediments to effective mutual legal assistance.

A very important aspect of Eurojust's work is to continuously seek to alleviate and overcome such barriers. The Eurojust Annual Report for 2002 suggested some possible improvements in this respect. In short the proposals were:

- Early implementation of the EU Mutual Legal Assistance Convention of 2000 and its Protocol;
- Ensuring the use of standard models for the handling of requests for mutual legal assistance;
- Improving quality in the drafting, preparation and translation of letters of request; and
- Enhanced mutual recognition and approximation of legislation.

As part of the continued efforts to ensure the effectiveness of mutual legal assistance, in 2003 Eurojust focused on identifying good practice and working methods to enhance judicial co-operation across different jurisdictions. Using an internal questionnaire the Casework Committee pooled national members' experience on: possible barriers to mutual legal assistance, reasons for success or failure, promoting Eurojust and encouraging referral of relevant cases, together with experiences with casework, co-operation with Europol and other matters.

The answers revealed that for the individual Eurojust members good relations and contacts with national authorities are very important. Working actively to create and maintain personal contacts and acquaintances between the national member and other partners was also important. A lack of knowledge of Eurojust, inflexible administrative practices, disputes of competence or authority and even jealousies have to some extent been barriers to the effective functions of Eurojust. National members may overcome such barriers by building close and trusted contacts with practitioners in their own member states, in other member states and in organisations such as Europol. This helps to ensure that relevant casework is referred to Eurojust and avoids duplication of work. Establishing a better understanding of Eurojust can be achieved through regular consultation with relevant officials, by participating and giving presentations at educational and training activities for practitioners and at relevant conferences and meetings. These methods are often time-consuming due to the number of magistrates and prosecutors in some larger countries and also because of different administrative and regional levels. But it is an effort which should in the long term bring an increase in the number and quality of the cases sent to Eurojust and thus increases the value it adds to judicial co-operation in Europe.

It is also important to ensure on the national level that the rules and procedures governing mutual legal assistance, not least the role of Eurojust and the Eurojust Decision, are well known and well integrated



into all the structures of the administration of justice. The importance of speedy implementation of the Eurojust Decision into national legislation cannot be underestimated. Similarly we must also emphasise the value of the member states giving instructions and making administrative provisions for co-operation with Eurojust as an additional means of enhancing knowledge of our organisation and to create channels to secure the rapid referral to Eurojust of problems.

It is also important to emphasise the benefits of effective working relationships between Eurojust, Europol and other institutions working in this area. The Eurojust Decision anticipates that close co-operation and co-ordination should exist and this is especially true for the relationship between Eurojust and Europol. The diverse legal systems in Europe mean that judges, prosecutors and police officers in each member state have different, and often very different, responsibilities and authority. There is important work to be done to clarify the needs and possibilities for co-operation through direct contact and overcome possible duplication and uncertainty or disputes of competence. The entry into force of the Eurojust – Europol agreement will offer an opportunity for renewed progress in this respect.

Last but not least the College recognises the great importance of demonstrating additional value to the police and the judiciary in the member states when dealing with casework referred to Eurojust. Special efforts should be made to make certain that Eurojust's procedures are speedy, effective and of high quality. Additionally, Eurojust should continue to work to achieve a wider analytical capacity, both in its own structure and by information sharing with Europol amongst others.

Eurojust is still a very young and developing institution. Much progress has been made and with the development of initiatives such as those mentioned above, the College feels sure that Eurojust will be able to consolidate its role and add value as a key player in the field of judicial co-operation and co-ordination.

### **A New Case Filing System**

Eurojust's caseload is varied. It ranges from relatively minor bi-lateral cases to large cases of very serious crime often involving several member states. As a consequence the extent of Eurojust involvement with cases also varies greatly. The meetings and arrangements required to facilitate or co-ordinate the investigation and prosecution will differ according to the nature of the case. There can be meetings of the College, restricted meetings attended only by the national members involved in the case, or broader based meetings to which those national authorities handling the cases are also invited.

These differences in caseload meant it was of great importance to develop a system to create an overview on the nature and extent of the cross border crimes and investigations referred to Eurojust. It was also important to be able to gather casework information in an easily accessible database. The establishment of a case filing system will allow us to generate data and statistics to be aware of trends and developments, to provide information on Eurojust's activities for the annual report and to address specific questions of concern for the competent authorities in member states or for other interested parties.

Our Annual Report for 2002 confirmed that Eurojust would begin work in 2003 to establish a new case filing system. When a case is referred to Eurojust the filing system records the nature of the case and identifies the authorities in the requesting and requested countries. The facts of the case and the nature of the crimes involved are also described briefly together with the type of assistance required by the requesting state.

When each case is opened basic information about the case is recorded in the filing system. Further information is added as the case progresses. The nature of the support given by Eurojust is described including the number and types of meetings held to facilitate or co-ordinate the case and other data relating to its conduct.

The outcome of the case is also recorded together with the time elapsed from the date the case started to the date Eurojust's involvement is completed. The system also has the capacity to record the nature of the competences or powers executed by Eurojust in connection with the case, the states involved and also if appropriate the external bodies that have assisted in dealing with the case.

Importantly the filing system may also record an evaluation of the outcome of each case. This allows better identification of the obstacles or problems resolved, or not resolved, enabling them to be categorized and action taken to have such obstacles removed.

The new filing system was introduced towards the end of 2003. At present it is paper based and experimental and our experience using the system is still limited. It is however clear that the new filing system will make a significant contribution to allow Eurojust to handle its casework more efficiently and to improve the quality of statistical information which is available. The system provides a tool for categorizing and keeping track of the Eurojust cases, whether they are College cases, national members' cases or requests for information.

At the same time the system will help provide transparency. By gathering structured information, the system enables Eurojust to create better and more comprehensive information and statistics about its



work. In the longer term this will enable the evaluation of Eurojust's work, and enhance the possibilities for Eurojust to identify new trends and to adjust resources and objectives.

The introduction of the provisional and experimental version of the new filing system is still at an early stage. There is further work to be done. The benefits of the system are obvious, so the development of a more user-friendly permanent IT based filing system is a priority. This work is now in its final stages and it is expected that an electronic filing system complying with data protection rules will be operational in 2004.

### **Casework Illustrations**

To illustrate the type of work we deal with we have set out below some outlines of cases handled by Eurojust during 2003. The examples cover a range of member states and different types of criminality.

#### ***Fraud and Money Laundering***

Eurojust was asked help to provide information to an investigator about the international background in a money laundering case against a foreign citizen resident in Austria. The defendant had been arrested in a third country following an arrest warrant issued by another European state (country X). A house had been bought in Austria using part of the proceeds of the crime committed in country X and then transferred to another person. Money laundering suspicions resulted in the Austrian Criminal Court placing a restraining order on the house. Information from country X was urgently needed to prevent the restraining order from being removed.

Within a short time Eurojust national members were able to discover that the suspect had been extradited and that there was an ongoing serious fraud case in country X involving several of its own nationals and several foreign citizens. Following the first request for information, the competent authorities in country X asked for support from Eurojust because of the complexity of the cross border investigations. It became necessary to request the assistance of seven European countries to gather material and evidence of fraud and money laundering. Connections were established between criminal offences committed in country X and in other countries and in particular forgery of documents and money laundering which were also linked to the Austrian case.

Eurojust's intervention had achieved the following important results:

- It became clear that the case was not just a bilateral request but part of a case with wide ranging international dimensions and one where good use could be made of Eurojust's capacity to co-ordinate action.
- Mutual legal assistance on bilateral and multilateral levels was facilitated and coordinated through constant information exchange.
- The rapid receipt of information through Eurojust ensured the restraining order on the house could be maintained and a significant asset was available for restitution.

### ***Serious Fraud***

In February 2003 Danish police authorities requested Eurojust's assistance to establish a discreet and confidential cross border investigation in relation to a wanted criminal. The background to the request was that after losing his appeal a Danish citizen, earlier convicted to two years' imprisonment for serious property crimes and tax fraud, had fled from Denmark to avoid serving his sentence. The fugitive was known to have several identities in various European countries and he was believed to have numerous sources of financial assistance. For these reasons it was thought that it would be very difficult to ensure his arrest.

The Danish police identified a trail of economic transactions leading to Spain but which had no direct connection to the wanted person although it was hoped they might possibly provide a lead to his whereabouts. The police asked Eurojust to assist in coordinating a discreet cross border investigation. It was of paramount importance for the investigation to be organized so the fugitive was unaware that the transactions had attracted the interest of the police as this would hinder his arrest. Eurojust organised a co-ordination meeting between the relevant prosecutors and police officers, where the details of the investigation were discussed and arranged. The investigation was a success and the fugitive was arrested.

### ***Serious Fraud***

In February 2003 more than twenty competent judicial and police authorities from Finland, France, Germany, Italy, Portugal and the United Kingdom participated in a co-ordination meeting in Finland organised by Eurojust in close collaboration with the Finnish authorities. The case was a very complex global economic crime and the proceeds of crime were estimated to be several dozens of millions of euros. Criminal activity had also taken place in countries outside the European Union. The Finnish



authorities had taken their domestic investigation forward as far as possible and wanted to stimulate authorities in other member states to start and to co-ordinate action in order to collect evidence and to receive a comprehensive picture of these complicated criminal activities.

The meeting led to better and co-ordinated execution of several letters of request for mutual legal assistance in member states and some of the problems relating to the execution of the requests were removed. Judicial and police co-operation in this case has been continuing through direct contacts established and strengthened at the meeting in Finland. During the year the main suspect was also arrested in a country outside the EU.

### ***Terrorism***

This case had been referred to the Italian national member in Eurojust by prosecutors dealing with an investigation concerning Islamic fundamentalist terrorism. It related to a subversive organisation acting with similar groups linked to Al-Qaeda, mainly in a role of supporting terrorist action. The Italian investigations highlighted some links with Spain, United Kingdom, France and Germany. In June 2003 as a first step the prosecutor sent letters of request to the competent judicial authorities of these countries to gather information about specific issues under investigation. The seriousness of the alleged crimes and of the suspects meant the letters of request had to be executed urgently. The Italian prosecutor was aware of Eurojust and its responsibilities and so consulted Eurojust in order to obtain support to facilitate the execution of the letters of request and to hold a co-ordination meeting with the national investigating and prosecuting authorities in those countries involved in the case.

The meeting was held at Eurojust in November 2003 when prosecutors from the five countries attended and the immediate advantage of the exchange information on current investigations was very beneficial. Relevant information about the *modus operandi* of those terrorist groups was exchanged and the meeting also provided a forum for those attending to better understand the mutual legal assistance procedures in the different judicial systems and to find technical solutions to overcome obstacles and delays in the execution of the requests. As a follow up of the co-ordination meeting, a further meeting will take place between Italian and Spanish prosecutors with the competent authorities from Algeria.

### ***Serious Fraud***

In April 2003 competent judicial authorities from Germany, Spain and Luxembourg participated in a co-ordination meeting organised by Eurojust at the request of German prosecutors. At a later stage the Eurojust contact point for Liechtenstein assisted. The German prosecutors were investigating a high profile German national – and are still investigating linked suspects – for fraud and other offences. Coercive measures had to be taken in several European countries and Eurojust was asked to help to co-ordinate the simultaneous execution of search warrants of residences and to examine bank accounts of the suspects at 25 locations in four countries. Following the co-ordination meeting in April 2003 a detailed strategic plan was drawn up by Eurojust and the national investigators to guarantee a strict timetable for a co-ordinated execution of all the warrants at the very moment the main suspect's immunity would be removed. This happened in June 2003 when the warrants were successfully executed.

### ***Trafficking in Arms***

This case concerns an offence of arms trafficking under investigation in the United Kingdom with links to The Netherlands. The case was referred to Eurojust for facilitation of mutual legal assistance requests and for internal co-ordination of enquiries within The Netherlands as assistance had been requested from two different regions by the United Kingdom. Prior to the referral to Eurojust the UK police had tried to facilitate and co-ordinate the requests on a police to police basis but found it impossible to do so. Following the referral to Eurojust a co-ordination meeting was held at which both regions of The Netherlands concerned in the case were represented. The meeting enabled a detailed strategy to be agreed for the execution of the mutual legal assistance requests and for responsibilities to be apportioned between the regions. It was also an opportunity for information to be exchanged between the various Dutch representatives. The position now is that three mutual legal assistance requests have been executed and evidence has been forwarded to the United Kingdom. The evidence is now being reviewed to consider prosecution.

### ***Drug Trafficking***

This case began with an Italian request for information and is particularly significant because it shows Eurojust's potential to provide national prosecution and investigating authorities with an overview about linked investigations. Those fighting against trans-national crime always benefit from a broad view and international perspective on what is happening in specific areas of criminal activity.



Italian prosecutors dealing with a huge international network trafficking cocaine between South America and Europe discovered the possible involvement of criminal groups acting in Italy, Spain, Germany and The Netherlands. Co-ordinated action among investigative authorities from various countries was required. Sending a series of Italian mutual legal assistance requests through Eurojust allowed the competent investigating and prosecuting authorities to be identified and then led to a co-ordination meeting. A follow-up meeting was held in July 2003 in The Hague. The Italian authorities have been able to issue a second series of mutual legal assistance requests focusing on obtaining the relevant information which was made known to them at the meeting.

One key outcome of Eurojust's involvement in the case is the establishment of a stable network of prosecutors dealing with the same case in different countries and so allowing constant co-operation to take place.

#### *Time Share Fraud*

Swedish authorities found a large number of Swedish citizens had reported being the victims of a fraud when purchasing time share apartments in Spain. Eurojust was asked to assist and national members made checks to try to identify any similar frauds in their own countries. Victims of a similar fraud appeared in France, Germany, United Kingdom, Belgium, and Finland. During the spring and summer of 2003 over 200 cases from Finland and more than 20 cases from Sweden were considered for transfer via Eurojust to an ongoing criminal process in Spain.

Those attending a subsequent co-ordination meeting held in March 2003 learned new information from other jurisdictions about current investigations and related cases already investigated, prosecuted and tried. They also learned about organisations operating this kind of fraud, convicted offenders and how victims might seek reimbursement.

An action plan was agreed to share information to help identify victims and gather evidence to assist the Spanish judge to detect the identities of all the possible perpetrators, and on the basis of this information a proposal was made to Europol to open an analytical work file.

### *Trafficking in Human Beings*

This case concerns trafficking in human beings where girls coming from Romania were recruited with the offer of good employment in Spain. In fact they were to work as prostitutes for a criminal network operating in France and Spain. The girls were sold to procurers to exploit them as prostitutes and they were also subjected to serious sexual assaults and other violence.

Initially the competent judge sent one of the minors back home but once in Romania she was subjected to threats for co-operating with the authorities and Eurojust was requested to organise a program of witness protection. One of the procurers had been arrested in France and a co-ordination meeting between competent authorities in France, Spain and Romania was held in February 2003. At the meeting an action plan was agreed:

- Spain should transmit to Romania all the information it had discovered about the organisation that was recruiting girls in Romania and transporting them to Europe.
- As the procurer arrested in France was also suspected of murder, and was to be tried there, some co-ordination was required of the prosecutions in France and Spain to deal with the *non bis in idem* principle.
- Measures to facilitate on going and future mutual legal assistance between Spain and France, and between France and Romania, allowing the French magistrate to be present in Romania when evidence was gathered.
- Action to set up a witness protection program was to be co-ordinated between Spain and Romania.

All the measures agreed have been implemented and additionally new contacts have been appointed between the French Ministry of Justice and the Romanian judicial authorities to deal with this case and similar problems should they arise in the future.

### *Sea Pollution*

France has requested Eurojust's assistance to speed up the transmission of information and facilitation of mutual legal assistance in a well known case of environmental pollution. The case followed the shipwreck of "The Prestige" in the Atlantic Ocean off the north-west coast of Spain in November 2002. Investigations are led by two investigating magistrates in France and in Spain. There are also peripheral links to Greece and the United Kingdom.



Eurojust organized two co-ordination meetings in 2003, the first in May in La Corunna in Spain and the second in November in Brest in France, both in close co-operation with the European Judicial Network and the liaison magistrates.

The purpose of the first meeting was to assist the magistrates in gathering experience about how to manage such a case, in which hundreds of victims have suffered loss. Colleagues leading similar investigations such as the shipwreck of “Erika” investigated in the Court of Paris and “Mar Egeo” investigated in the Court of La Corunna were invited to share their experience. The purpose of the second meeting was to explore the possibility and draw on legal expertise to decide if it was possible, and if so how, to centralize the ongoing prosecutions into a single proceeding, to be led by one of the countries. This discussion is ongoing and will draw on the results of the Eurojust seminar on “Deciding Which Jurisdiction Should Prosecute” held in November 2003 in The Hague.

### **Bank Card Fraud**

This case started for Eurojust in February 2003 following a Dutch request to France for the transfer of criminal proceedings in several cases concentrated in The Netherlands which had a notable *modus operandi*:

A group of French citizens had been suspected for years of working throughout Europe to obtain money from automatic cash dispensers outside the normal bank opening times. The suspects, by means of a deception obtained details of the customer’s credit cards by posing as bank clerks and by pretending to help they discovered the customer’s PIN. This deception is internationally known as *collet Marseillais*.

When preparing the request the Dutch prosecutor asked his colleague at Eurojust to obtain some similar information from Germany. Following that the German member of Eurojust found out that several prosecution offices in Germany had been investigating the same circle of suspects in a series of cases which were independent from each other.

Co-operation through Eurojust achieved two objectives quickly. First, a decision by the board of German Prosecutors General was made so that, after some years of separate and isolated investigations, in June 2003 all the German cases could be dealt with by one office. Secondly in March 2003 Eurojust had already developed an international network to co-ordinate action between The Netherlands,

France, Austria and Switzerland as Eurojust discovered that one of the main suspects was in preliminary custody in Switzerland. In July 2003 Germany joined the group.

Despite these successes the numbers of offences and defendants meant it was impossible to have the suspects tried in one state for all the offences committed in all member states concerned.

### Comments on Casework Statistics

In 2003 the number of cases dealt with by Eurojust increased by 50% (see *Figure 1*). Although the main increase was in bilateral cases, the increase in the number of multilateral cases referred to the College was also significant and is worthy of comment.

Some national authorities are more willing than others to refer such cases to Eurojust for better co-ordination of their investigations and proceedings or to be able to discuss with other authorities the question of an international strategic approval to their cases. More than half of the co-ordination meetings organised by Eurojust involved at least three countries (*Table 1*). As Eurojust is now settled in its new premises it can offer better support to the national authorities. Even though the new conference and meeting room facilities were not available in 2003 two thirds of the co-ordination meetings were held in Eurojust's premises by bringing in temporary translators booths and other equipment. Eurojust's capacity to organise more such meetings will be significantly improved from the early part of 2004.

The increase in cases referred is also reflected in the statistics for requesting and requested countries. Overall the involvement of the national members in operational work increased. However, the statistics do not reflect the quality or seriousness of the cases or the level of Eurojust input required to resolve them. Some cases can be dealt with very quickly, others require more work, time and effort. Nevertheless the national members' overall view is that the quality of the cases is improving and they are eager to improve this still more with the assistance of their national authorities. Improving the quality of cases referred is a higher priority than improving the quantity. However, as the Eurojust Decision has not been implemented in all member states, this affects the numbers of cases referred to national members by their national authorities.

*Figure IV* deals with the types of offences referred to Eurojust. Drug trafficking and fraud cases make up the largest categories of cases dealt with by the College and such cases have significantly increased the number of drug trafficking cases, doubling those referred in 2002. Fraud cases are a broad category and include various different types of fraud: tax fraud, serious fraud, embezzlement, investment fraud, insurance fraud. They do not include VAT fraud or fraud against the financial interests

of the Community. Many of these cases are complex and require co-ordination meetings for problems to be resolved. Terrorist cases fall into a similar category. Some other types of offences, such as money laundering and trafficking in human beings (including three cases of illegal immigration), have also increased over those referred in 2002.

The category “others” represents 24 offences which concern less than 10 cases per offence (the most numerous: fraud against the financial interests of the Community, smuggling, robbery, organised crime, trafficking in cars, corruption, counterfeiting, homicide and embezzlement).

A significant improvement in ICT during 2004 should allow Eurojust to give more detailed and significant statistics in next year’s Annual Report. This will allow us to emphasise the important aspects of our work and to focus more on the needs expressed by the national authorities, our own activities and criminal links between countries.

**Figure 1 : Bilateral - Multilateral cases**

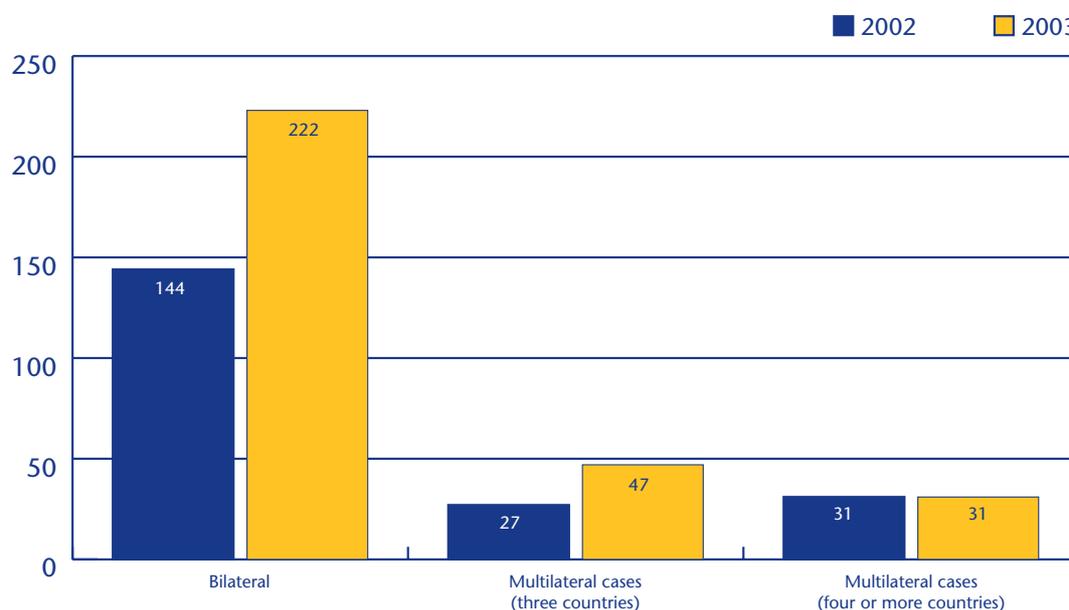


Figure II : Requesting countries

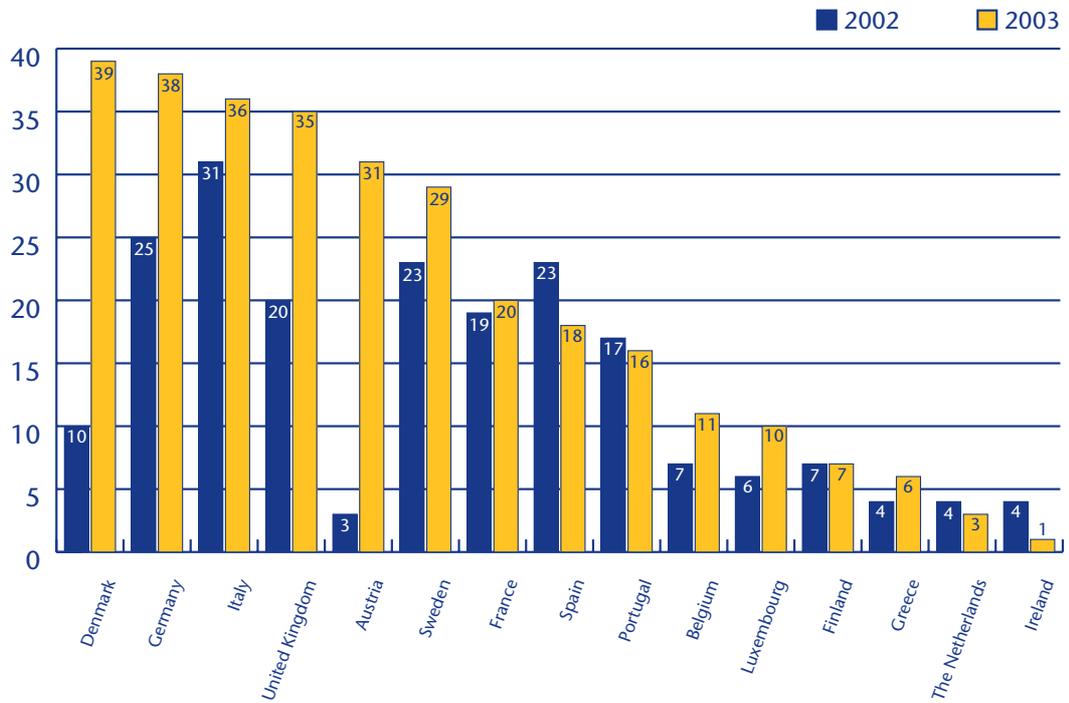


Figure III : Requested countries

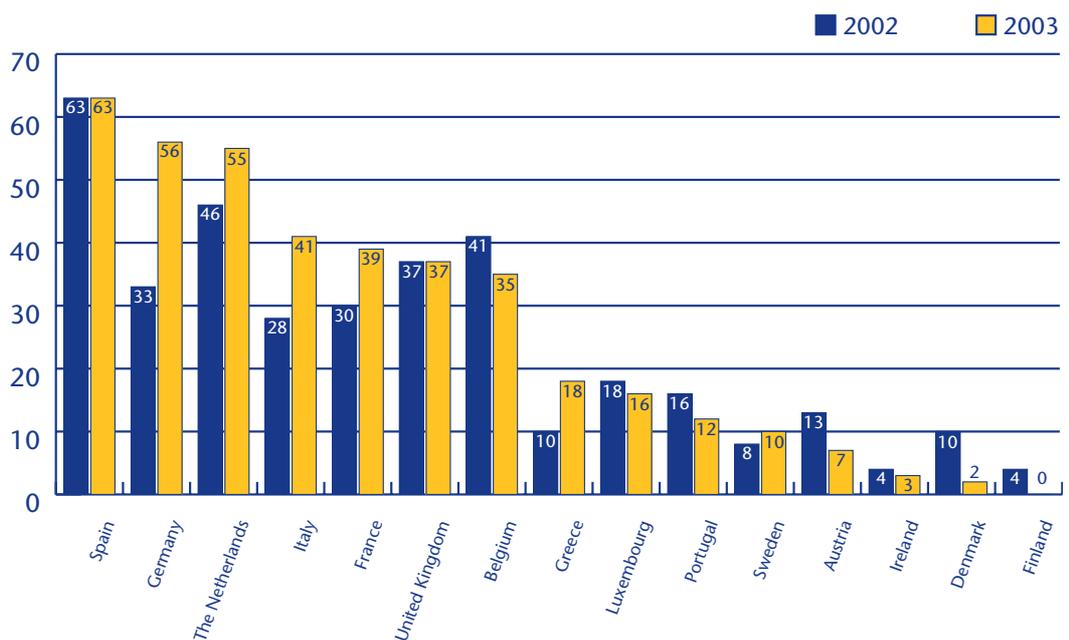


Figure IV : Category of offences

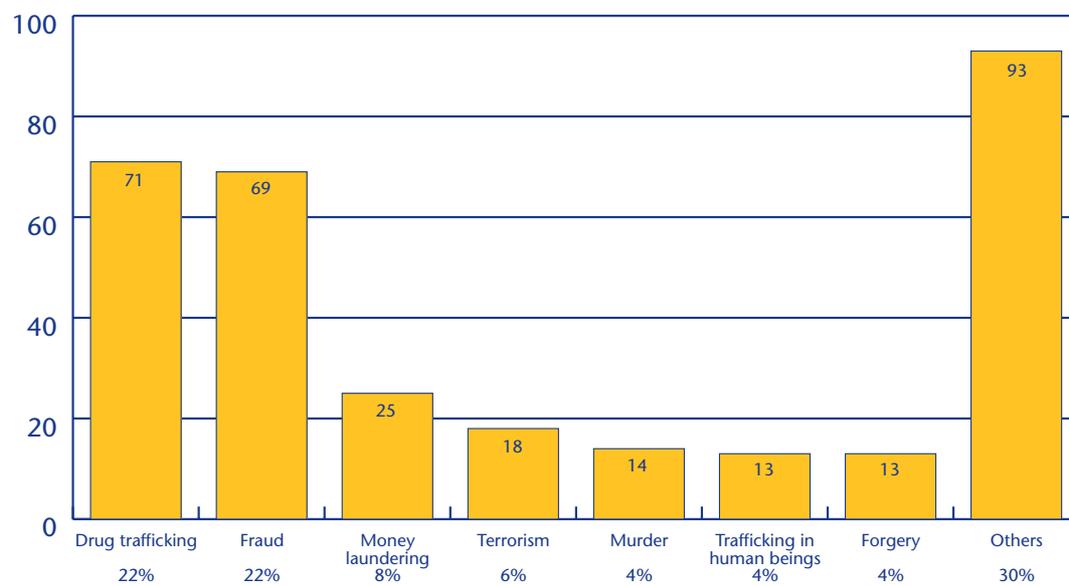


Table I : Co-ordination Meetings

Date & place of meeting	Number of states	Member states													Other countries				
		AT	BE	DE	DK	ES	FI	FR	GR	IE	IT	LU	NL	PT	SE	UK	ISR	ROM	USA
10 01 03 Eurojust premises	2																		
27 01 03 France	4																		
07 02 03 Sweden	2																		
10 02 03 Finland	6																		
24 02 03 Eurojust premises	2 EU + 1 non EU (candidate)																		
27 02 03 Eurojust premises	3																		
04 03 03 Eurojust premises	7																		
10 04 03 Belgium	2																		
15 04 03 Eurojust premises	3																		
21 05 03 Spain	3																		
12 06 03 Spain	2																		
17 06 03 Spain	3																		
24 06 03 Eurojust premises	10 EU + 1 non EU																		
02 07 03 Eurojust premises	4																		
10 07 03 The Netherlands	2																		
07 08 03 Eurojust premises	2																		
16 09 03 Eurojust premises	2																		
17 09 03 Eurojust premises	2																		
03 10 03 Spain	3																		
21 10 03 Eurojust premises	11 EU + 1 non EU																		
04 11 03 Eurojust premises	2																		
06 11 03 Eurojust premises	3																		
25 11 03 Eurojust premises	2																		
26 11 03 Eurojust premises	5																		
26 11 03 France	3																		
02 12 03 Portugal	2																		
<b>Total 26</b>	<b>For each member state</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>2</b>	<b>14</b>	<b>4</b>	<b>11</b>	<b>4</b>	<b>1</b>	<b>11</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>3</b>	<b>13</b>	<b>1</b>	<b>1</b>	<b>1</b>



## 4 RELATIONS WITH NATIONAL AUTHORITIES

It is an important part of Eurojust's work to ensure that regular contact is maintained between the national members and the competent authorities in the member states. It is crucial to the successful development of Eurojust that national investigating and prosecuting authorities understand what facilities Eurojust can offer and have confidence and trust both in our organisation and in their own national member. To help achieve this aim the College continues to meet in The Hague for three days each week, allowing two days for contact with national investigators, prosecutors and ministries. The College continues to arrange one week every two months to allow national members to devote time to dealing with casework and building relations with national agencies.

Although in 2003 case referrals increased by fifty per cent over the number of cases referred to Eurojust in 2002, for reasons mentioned elsewhere in this report, the College still feels that Eurojust has additional capacity to handle an increased number of more serious cases.

We concluded in the Annual Report for 2002 that in spite of encouraging signs, there was a patchy awareness of Eurojust, the European Judicial Network and other EU organisations operating in the area of judicial co-operation in criminal matters. We are confident that Eurojust is now better known particularly amongst senior investigators and prosecutors where support for our organisation is strong. However, more needs to be done to raise levels of awareness amongst more junior members of the competent authorities in member states. The Casework chapter of this report sets out some examples of the cases dealt with by Eurojust. We have found that successful outcomes of the work referred to Eurojust have shown investigators and prosecutors that Eurojust can add value to their work. One real success often helps to publicise Eurojust in ways which cannot be achieved simply by organising meetings or giving presentations to publicise our organisation.

Some member states have increased awareness of Eurojust amongst their national authorities by arranging visits to Eurojust for delegates to meet their national members in The Hague. This helps to raise Eurojust's profile and the College is keen to welcome visitors to its premises. During 2003 almost all member states sent delegations to Eurojust. The Swedish authorities for example incorporated visits to Eurojust as part of their national training programme for prosecutors.

Many more staff in national authorities are now familiar with what Eurojust has to offer. Furthermore, although the numbers of case referrals are improving, co-operation in general and exchange of information can be further enhanced. But whilst co-operation with many national and European organisations has improved, the situation in particular with OLAF at present remains unsatisfactory. We are working with OLAF to improve this situation.

During 2003 national members continued their efforts to raise Eurojust's profile and to encourage a better awareness of its existence and work in the member states. All Eurojust members held meetings



with their national authorities, prosecutors and investigators, police and customs officials to improve practitioners' knowledge.

The College is pleased that most of the member states have complied with the Council Decision of December 2002 and appointed a Eurojust national correspondent for terrorist matters. This will greatly enhance cooperation on terrorism matters with Eurojust.

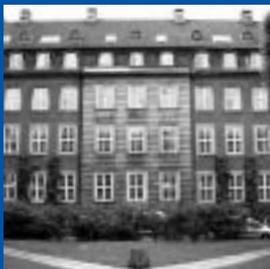
Elsewhere in this report we emphasised the need for implementation of the Eurojust Decision in national legislation. We anticipate that, where it is required, implementation will allow the national members to interact and serve their domestic authorities and Eurojust much more effectively. It is equally important, in those states where no legislation is needed, that the Eurojust national members are actually given the capacity to comply with the commitments and obligations set out in the Eurojust Decision.

National members continue to participate in meetings of the European Judicial Network on both the national and international stage. A key part of maintaining strong associations with national authorities means building a good understanding between Eurojust and the EJM at national level.

Some national members also wrote articles about Eurojust and judicial co-operation for legal reviews and magazines. Others made presentations during training sessions arranged for their judiciary, magistrates, prosecutors and police schools. These are seen to be particularly effective if the national member brings a colleague with them from another jurisdiction who is able to explain in parallel the impact of Eurojust from his or her own country's perspective.

During 2003 as an organisation Eurojust was asked much more frequently to send speakers to participate in various conferences and seminars on cross border crime issues. These tasks are shared according to the availability and linguistic expertise of the national members. This is helping to raise Eurojust's profile and increase its workload by promoting Eurojust as an effective facilitator of judicial co-operation and co-ordination in the European Union. It is very demanding on our limited resources but, in particular in our initial phase, it is necessary and an important part of our work.

The information technology system, which is now installed in our premises, allowed Eurojust to create a basic website in 2003. This is a useful tool which Eurojust will develop further in 2004. It will create a more effective means through which the College can publicise its work and raise its profile both nationally and internationally. Through it, national authorities will also be able to gain access to Eurojust and materials relating to the work of the organisation.





## 5 EU ENLARGEMENT AND THIRD STATES

The European and international environment, in which the legal systems and the investigation and prosecution responsibilities within them change as frontier controls are crossed, requires the capacity to co-operate and co-ordinate law enforcement action in all countries. Crime and criminals do not have to recognise international frontiers. Eurojust has continued its work to develop a better awareness of its facilities not only inside the member states of the EU but also in the EU accession and candidate countries and in third states both within and outside Europe.

During 2003 Eurojust maintained its objective of working to ensure a smooth transition as our organisation prepared for EU enlargement in May 2004. We have introduced a system of “godparents” to link accession and candidate states to current Eurojust national members. These links draw on historical, geographical and cultural associations to enable the College to offer a better welcome to our new EU partners. In February 2003 the President of the College and the national member for Germany were pleased to accept an invitation to visit the Polish Deputy Minister of Justice, the Deputy Prosecutor General for Poland, and other senior prosecutors in Warsaw and Gdansk. We were happy to be able to thank some prosecutors who had been co-ordinating action on one of our cases and to speak to prosecutors and the media about our work and the possibilities offered by Eurojust now and in the future.

Our inauguration on 29 April 2003 followed two weeks after signature of the Treaty of Athens and we were delighted that many Ministers of Justice and Home Affairs from EU accession and candidate countries chose to attend.

A meeting of the College with our contact points in the candidate and accession states took place in our new premises in May 2003. This continued to cement the close relationships Eurojust has developed with them and gave the College and the contact points the opportunity to better appreciate the issues of the development of the EU JHA *acquis* in the candidate states and the practical problems which need to be resolved.

A good example of Eurojust’s preparation for enlargement was a seminar *inter alia* on Eurojust in September 2003 organised in Estonia by the national member for Finland and the Finnish liaison magistrate in Estonia and the Estonian authorities. The Ministers of Justice from Finland and Estonia were keynote speakers and the seminar was chaired by the Prosecutor General of Estonia. The national member for Sweden also made a presentation. There were more than 120 participants from Estonia, Denmark, Sweden and Finland. The office of the Prosecutor General, local prosecution offices and the Estonian Supreme Court were well represented. Senior government officials also took part. The seminar was well received in the media.



In December 2003 the President wrote on behalf of the College to all Ministers of Justice and Home Affairs in the accession states asking them to consider the early nomination of their Eurojust national member. The request also invited the Ministers to consider sending their nominees before 1 May 2004 to allow an easier transition as the College grows from 15 to 25 national members. We are pleased that several states have appointed a national member and that some will join us as observers well before 1 May 2004. We also offered to provide further support and assistance both in The Hague and in the accession states to help establish Eurojust in their systems as a tool in the fight against cross border crime.

The Eurojust Decision allows Eurojust to conclude co-operation agreements with third states. Such agreements can provide for and facilitate the exchange of personal data and make it possible for third states to send liaison officers or magistrates to Eurojust. The first negotiation of this type began in the summer of 2003 when Eurojust took forward a proposal to discuss a co-operation agreement made by the Minister of Justice for Norway. These negotiations are well advanced and linked to the adoption of our Data Protection rules. We expect that a final agreement will be reached and submitted to the JHA Council for approval during 2004. We expect that, once concluded, this agreement will provide a template for future negotiations and form the basis for further agreements with some other countries, a number of whom have expressed interest in having formal co-operation agreements with Eurojust.

We continue to enhance the practical links with third countries. For example in April 2003 we held a co-ordination meeting on terrorism and the financing of terrorism. The event was attended by senior expert representatives from all EU states; also present were specialists from the competent authorities of Switzerland, Liechtenstein and the United States of America. We also held a meeting on European activity thought to be financing terrorist action in the Middle East, attended by European investigators and a representative from Israel.

In our Annual Report for 2002 we indicated that many countries including Canada, Norway, Switzerland, Liechtenstein, the USA and Japan had nominated contact points to work with Eurojust. That report also highlighted Eurojust's efforts to increase awareness of our activities both inside and outside the European Union. Several contact points have been in regular liaison with Eurojust to resolve casework problems and to assist in the co-ordination of investigations and prosecutions.

The College sees the Russian Federation as an important future partner in the fight against organised cross border crime. Following an earlier request to the Russian Federation to appoint a contact point to work with Eurojust, we were particularly pleased to welcome a high level delegation from the Russian Federation to our premises in The Hague in October 2003. The delegation was led by the deputy head

of the President's Administration Office. These positive discussions have resulted in the Prosecutor General of the Russian Federation agreeing to nominate a Russian contact point from within his office. The nomination was made in December 2003 and the contact point is due to visit Eurojust in March 2004 to lay the foundations for future work.

In November 2003 the President of the College was invited to address the joint Ministerial Meeting of Justice and Home Affairs Ministers from all the EU States and from the Western Balkans. Eurojust's capacity at present is limited and our priorities are focussed on establishing our organisation within the EU and dealing effectively with the challenges presented by EU enlargement. The College is able to offer some help and to share its experience and so we have nominated a prosecutor who is the deputy to one of our national members to take lead responsibility for links with Balkan states. Developing the theme of contacts the President invited the Ministers to nominate contact points from within their respective prosecutors' offices to work with Eurojust. We were pleased to receive a response from the Serbian authorities who nominated a contact person immediately. We look forward to developing a relationship with him and to receiving nominations from other states in the region.

Eurojust has also developed contacts and good working relationships with international organisations and bodies such as the office of the Prosecutor of the International Criminal Court and the Council of Europe (Conference of Prosecutors).

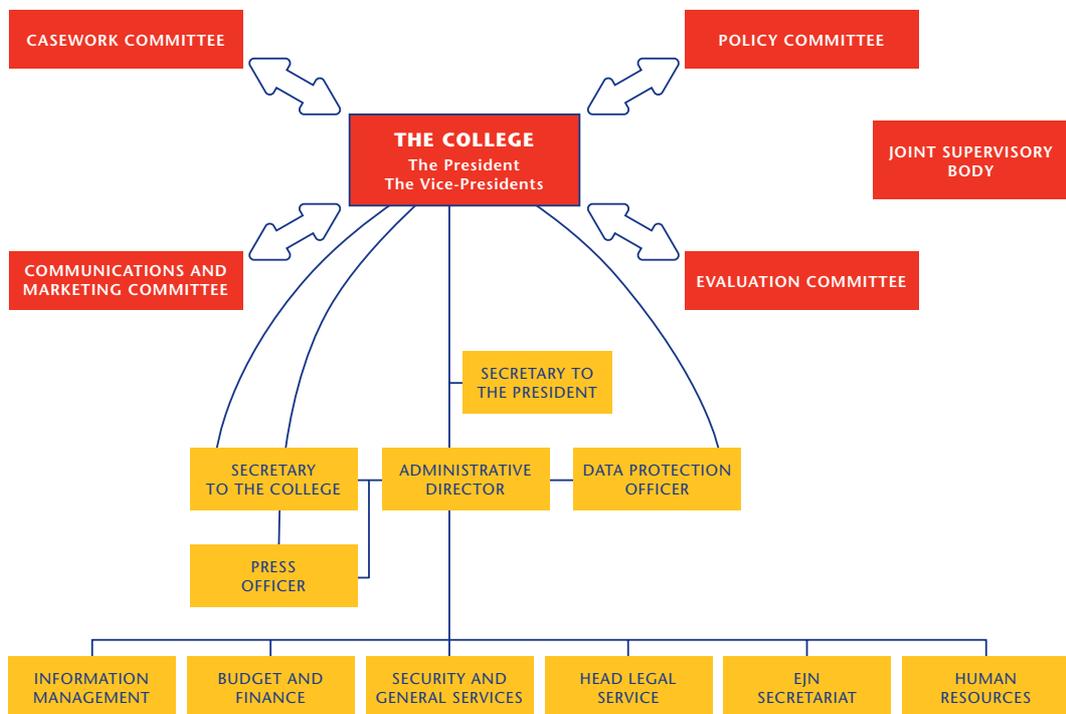
We expect much of our work in 2004 will be focussed on making EU enlargement a success. We will not, however, overlook the important work we must do to develop and strengthen our capacity to facilitate action with investigating and prosecuting authorities from outside the EU.



## 6 ADMINISTRATION

Within Eurojust the role of the Administrative Director and his staff is to support the College and to provide the wide range of facilities and services necessary to achieve the objectives set out in the Eurojust Decision. In addition to those responsibilities, the Secretariat of the European Judicial Network (EJN) forms part of the Eurojust Administration in accordance with Article 26(2) of the Eurojust Decision.

### *Staffing and Organisational Structure:*



Eurojust moved into its premises in The Hague on 14 December 2002 so 2003 has been a year during which the organisation has grown significantly.

At the beginning of 2003, all the administrative tasks were overseen by the Administrative Director and implemented by him together with a small task force of six and some interim staff. Two members of the task force left Eurojust during 2003. As a consequence, apart from ensuring the maintenance of the operations of the College, a major commitment was to employ experienced staff. By the end of 2003, 25 new statutory staff members were recruited. Three other members of staff have been offered



contracts which they will take up early in 2004. This recruitment has allowed the Administration to build up a basic infrastructure for the main services needed. These include budget and finance, information management (including ICT), security and general services, EJN Secretariat and human resources. Additionally, almost all the national members now have permanent secretarial support which they all lacked at the beginning of the year. Other key appointments were made towards the end of the year when a Press Officer and a Data Protection Officer joined the organisation.

The strengthening of these administrative services and the establishment of a legal service and the appointment of a Secretary to the College (currently provided on a temporary basis by a member of the French desk) will be important tasks in 2004. To that end, further recruitment procedures were launched at the end of 2003. Information on the recruitment for vacant positions is available on the Eurojust website (<http://www.eurojust.eu.int>).

### **Internal Legal Framework and Joint Supervisory Body (JSB) for Data Protection**

The Administration gave high priority to developing an internal legal framework for Eurojust during 2003. By the end of the year drafts of a number of important documents had been prepared including: Eurojust's Financial Regulation, rules for Public Access to Eurojust Documents and for any investigations conducted by the European antifraud office (OLAF). We expect these documents to be approved and adopted early in 2004. The Eurojust JSB also met for the first time in 2003 and a Data Protection Officer was appointed.

### **Infrastructure**

When Eurojust first moved to The Hague in December 2002 only a very basic infrastructure could be established. These basic arrangements were consolidated and developed during 2003, laying the foundations for the present 15 national members of Eurojust and from 1 May 2004, for an enlarged Eurojust with 25 national members. The necessary construction and refurbishment work for enlargement has been initiated. An infrastructure will be in place to host the ten new national members.

Although negotiations are well advanced we are disappointed that Eurojust has still not been offered a finalised Seat Agreement for signature by the Dutch government.

## **The Secretariat to the European Judicial Network (EJN)**

The EJN Secretariat has been staffed with a Secretary, a personal secretary and a webmaster in accordance with the prior agreement of EJN. Working closely with the Secretary the EJN Secretariat has successfully integrated with the Eurojust Administration. Structures and procedures to implement Article 26(2) of the Eurojust Decision were developed and grant agreements were concluded with various external partners in order to co-finance EJN meetings and to ensure the further development and maintenance of the EJN projects including the “*Judicial Atlas*” and the “*Fiches belges*”.

## **Budget Management**

Eurojust’s budget for 2003 was prepared and granted on the assumption that the organisation would move to The Hague by mid-2002 and would be able to create its own infrastructure by the same date. One direct consequence of the delayed move, a situation which was beyond the control of Eurojust, was that the timetable to build up the organisation had to be delayed by six months. The execution of the 2003 budget was also affected by the delay of the host state to provide Eurojust with the meeting facilities which had been planned. This restricted Eurojust’s ability to carry out one of its core activities, to host co-ordination meetings, in 2003. The overall effect of these factors was that in 2003 Eurojust executed approximately € 5.9 million or about 70% of its total budget. We were pleased that the Court of Auditors stated in its report on the financial affairs of Eurojust for the year 2002 that the annual accounts for 2002 “*are reliable and that the underlying transactions, taken as a whole, are legal and regular*”. The Administrative Director will issue a Financial Management Report with more detailed information.

## **The Inauguration of Eurojust in The Hague**

The preparations for the inauguration of the Eurojust premises in The Hague constituted a major challenge for the College, the Administrative Director and his small team during the early months of 2003. The ceremony was held on 29th April 2003 and was attended by over 200 people. Ministers of Justice and Home Affairs, Ambassadors from EU member states and EU candidate countries, together with the leaders of various EU institutions, high-ranking officials and senior prosecutors and investigators and others from the European judicial environment were present. Speeches were made by Michael Kennedy, President of the College; Mr Philippos Petsalnikos, Minister of Justice for the Hellenic Republic and President of the JHA Council; Mr António Vitorino, the EU Commissioner responsible for Justice and Home Affairs; Mr J P H Donner, Minister of Justice for the Kingdom of The Netherlands;

Mr Jorge Hernandez Mollar, Chairman of the European Parliamentary Committee for Citizens Rights and Freedoms and Justice and Home Affairs; and Mrs L Engering, Deputy Mayor of the City of The Hague. The official event was followed by lunch and a programme organized by the City of The Hague. Eurojust received many positive reactions indicating that the inauguration was a great success.

In October 2003 Eurojust appointed a Press Officer who is in charge of internal and external communications. An initial communication and press strategy was developed and approved by the College and an internal weekly magazine created.

A basic website was established in 2003 which will be further developed in 2004. The website's contact email address received 304 requests for information about Eurojust during the year. In 2003, a new logo was created, approved and brought into use. The new logo will help to create and develop a clear identity and a bolder style for our new organisation.



## 7 EUROJUST'S OBJECTIVES FOR 2004

The success of the Eurojust planning event held in 2002 led the College to hold a further planning event in The Netherlands in October 2003 to review progress and to define the main objectives for 2004. The College is grateful to members of the Management and Audit Service Team from the Crown Prosecution Service for again facilitating the event. We expect that a planning event will become a regular feature in the Eurojust calendar.

The key objectives agreed by the College for 2004 are:

- To prepare and submit to the Council for approval data protection rules in accordance with the terms of the Eurojust Decision.
- To establish a programme of meetings and other action to develop further the existing relationships between the College and the European Union Accession States to ensure a smooth transition as the College grows from 15 to 25 national members when EU enlargement takes place on 1 May 2004.
- To continue at every opportunity the work to encourage the early and full implementation of the Eurojust Decision in all the member states with appropriate legislation being adopted where necessary.
- To review and renew the Eurojust strategy for marketing and increasing the numbers of serious multilateral cases referred to Eurojust. The strategy will make clear and detailed reference to ensuring full attention is paid to developing an effective programme to promote case referrals from the new member states in the enlarged European Union.
- To improve the quality of appropriate interaction between Eurojust and Europol by:
  - driving forward the adoption and implementation of the agreement which is being negotiated with Europol;
  - in appropriate circumstances, where Eurojust can add value and in close co-operation with Europol, Eurojust should aim to generate its own cases;
  - encouraging individual national members of Eurojust to develop and improve their relationships with the members of their national desks at Europol. This is with a view to ensuring the combined resources of Eurojust and Europol national desks are used to best effect and particularly to guard against duplication of work and so that action taken by one organisation does not prejudice the work of the other.
- To continue to work to improve the quality of co-operation between Eurojust and the European Judicial Network (EJN) and to ensure that each organisation is fully aware of the work of the other, ensuring full use is made of the opportunities for working together with the EJN Secretariat.



- To review and evaluate the existing Eurojust Memorandum of Understanding with OLAF and to use this evaluation to begin to plan and prepare a new agreement with OLAF with the view to improving the co-operation and effectiveness of both organisations.
- To establish a framework to provide Eurojust with a new ICT system which can be developed to allow the secure transmission of electronic communications to competent authorities in the member states and the provision of a casework database.





## 8 CONCLUSIONS AND PROPOSALS

The College would like to thank the European institutions and all those who in the past year have helped to improve Eurojust's work and to establish our organisation in its new premises in The Hague.

We also want to thank those competent authorities in the member states who have demonstrated confidence in our work by referring cases to Eurojust for facilitation and other assistance.

The statistics presented in this report show a fifty per cent increase in the number of case referrals and so clearly demonstrate that Eurojust has made a promising start in The Hague.

Nevertheless much remains to be done if Eurojust is to fulfill its mission as it was conceived during 1999 at the EU summit in Tampere, Finland. Some of these issues can be identified as:

- The completion during 2004 of the facilities which should have been finished in December 2003, required for Eurojust to organise effective co-ordination meetings in specially constructed rooms in our own premises.
- To have in place a data base system and rules on data protection which are to be sent to the Council for approval in 2004.
- The national members of Eurojust must be able to receive all the information from the competent authorities in the member states needed for them to carry out the tasks and responsibilities given to them in the Eurojust Decision.
- More large and complex cases, specifically within Eurojust's competence, such as fraud against the financial interests of the EU, are not referred to the College to benefit from Eurojust's input.
- The role and responsibilities of all Eurojust national members must be recognised and empowered within their legal own systems. If necessary this should be achieved by passing national legislation to confirm the commitment required from member states when they agreed to implement the Eurojust Decision. The work to implement the Decision should have been completed by September 2003 but even at the end of 2003 many countries have still to fulfil these obligations.
- In the light of experience gained Eurojust must seek to comply with the Decision and to make firm proposals for improving judicial cooperation in Europe.



- The Mutual Legal Assistance Convention of 2000 and its Protocol are key parts of the EU JHA *acquis* and essential for more effective mutual legal assistance. It is very disappointing that the Convention has been brought into force in only three member states. Similarly the European Arrest Warrant should have been in force in all member states by the beginning of 2004 but at that time only eight member states had completed implementation. The other member states expect to implement these provisions in the early months of 2004. These are examples of instruments which must be in force to create the judicial environment in which Eurojust can begin to achieve its full potential.
- Eurojust's work with Europol has already made significant progress but more operational co-operation is needed particularly in the mutual support of Joint Investigation Teams. Similarly we feel that judicial authorities should be able to make more use of the analyses made by Europol through Eurojust. We hope that the agreement between the two organisations will be approved without any further delay.
- During 2003 the level of effective co-operation with OLAF has been unsatisfactory. We feel this must change in 2004 as the two units work more closely together. National competent authorities must contribute by playing their part and utilising fully the facilities that Eurojust can offer when OLAF reports matters to Eurojust.
- For its part Eurojust must demonstrate more clearly the action it takes, the results it achieves, and work more effectively with the competent authorities in member states. *Inter alia* this will increase the use of the powers given to the College and national members under Articles 6 and 7 of the Eurojust Decision.
- Finally, during the coming year we look forward to welcoming the ten new national members who will join Eurojust. EU enlargement will enrich Eurojust and we must work to ensure that we build faith and confidence to meet the challenges of developing better judicial co-operation and co-ordination in the new European Union.

## 9 ANNEXES & PHOTOGRAPHS

### Members of the College



**1. Mike Kennedy** is President of the College and national member for the UK. He has more than 20 years of experience as a prosecutor. He has dealt with a wide range of serious cases at the headquarters of the Crown Prosecution Service where he was also the Head of the International Branch handling MLA and extradition matters. Before joining Eurojust he was the Chief Crown Prosecutor for Sussex in England.



**2. Olivier de Baynast de Septfontaines**, a Vice-President of the College and national member for France, is an Avocat General and has 28 years of judicial experience. He has been a *juge d'instruction* and then secretary general to the *Cour de Cassation*. He was also sub-Director of the Ecole Nationale de la Magistrature and chief of the service responsible for European and International Affairs at the French Ministry of Justice (central authority) for civil and penal matters and co-operation, negotiations, and human rights issues.



**3. Björn Blomqvist**, a Vice-President of the College and national member for Sweden, has over 20 years' experience as a prosecutor. He was appointed as Principal Judicial Officer at the Prosecutor General's Office in 1989 and worked as an advisor to the Ministry of Justice. In 1995 he was appointed as State Prosecutor, specialising in economic crime and later as Chief District Prosecutor at the Economic Crime Bureau. In 2001 he became Sweden's representative at Eurojust and in 2002 he was appointed as a deputy Director of Prosecutions.



**4. Ulrike Haberl-Schwarz** is national member for Austria. She started her career as a judge in Salzburg in 1990. When dealing with major economic and financial crime cases as an investigating judge for six years she gained experience both in international co-operation matters and in organized crime. She joined Eurojust in January 2003. She was elected Vice-President in January 2004 to replace Björn Blomqvist.



**5. José Luis Lopes da Mota** is national member for Portugal. He has 25 years' experience in the judiciary as a prosecutor and as an assistant to the Portuguese Prosecutor General where he was responsible for matters related to management of the prosecution services at a national level and for international co-operation. He was a lecturer at the Portuguese national school for magistrates and a deputy Minister of Justice in charge of a range of issues including European affairs.



**6. Michèle Coninx** is national member for Belgium. She has more than 15 years' experience as a prosecutor. She worked for nine years for the International Civil Aviation Organisation and was responsible for anti-terrorism relating to aircraft sabotage and hijacking. Before joining Eurojust she was a National Prosecutor in Belgium dealing with terrorism and organised crime.



**7. Hermann von Langsdorff** is national member for Germany. He has 30 years' experience as judge and prosecutor. Before becoming the National Member for Germany he worked as a Federal Prosecutor dealing with terrorism and espionage cases.



**8. Georges Heisbourg** is national member for Luxembourg. He has been a member of the judiciary in Luxembourg since 1976. He has worked for more than 20 years as a prosecutor. He was appointed a deputy chief prosecutor in 1993 and was head of the organized crime branch in charge of major money laundering cases and international judicial co-operation matters.



**9. Micheál Mooney** is national member for Ireland. He was enrolled as a solicitor in Ireland in 1990. He became an Assistant Solicitor in the Office of the Chief State Solicitor in 1990 and was appointed a Professional Officer to the Director of Public Prosecutions in 1995. In March 2001 he was seconded as Ireland's representative to Eurojust in Brussels.



**10. Tuomas Oja** is national member for Finland. He has more than 10 years' experience as a prosecutor and a judge following his previous career in the private sector. Prior to his appointment to Eurojust he worked for several years as a counsellor at the Finnish EU representation in Brussels on criminal and judicial co-operation matters in the EU.



**11. Roelof-Jan Manschot** is national member for The Netherlands. He has more than 30 years' experience as a prosecutor. He was advocate-general at the Court of Appeal in Amsterdam from 1985 where he worked specifically on organized and financial crime. He was appointed as a Chief Prosecutor in 1995 and he joined Eurojust in June 2001.



**12. Cesare Martellino** is national member for Italy. He started his career as a prosecutor in 1969. Until 1988 he acted as deputy prosecutor in Rome and later as Chief Prosecutor in Terni. During his career he has dealt with sensitive cases concerning organized crime, corruption, murder and kidnapping. In Italy he is currently entrusted with a significant role as a judge in the field of sports justice.



**13. Rubén Jiménez** is national member for Spain. He was appointed as an examining judge in 1973. In 1996 he was appointed and served for 6 years as a member of the General Council of the Spanish Judiciary. Whilst in this post he was responsible for organising the EJM in Spain.



**14. Stavroula Koutoulakou** is national member for Greece. She worked in private practice as a lawyer before entering the Greek judiciary in 1997. She served as a Deputy Public Prosecutor in Athens and in Korinthos until her secondment to Eurojust in June 2002.



**15. Anders Linnet** is national member for Denmark. He has more than 25 years of experience as prosecutor *inter alia* specialising in prosecution of organized crime. For more than a decade, he held a part time position as external associate professor, University of Copenhagen. After leaving Eurojust he has been appointed Commissioner of Police in Greenland.

## Deputies & Assistants



**1. Jürgen Kapplinghaus** is deputy national member for Germany. He has more than 29 years' experience at different levels in the prosecution service. From 1975 to 1989 he was a local prosecutor and then he spent 10 years at the General Prosecutor's office. Between 1999 and 2001 he was attached to the Ministry of Justice in North Rhine-Westphalia. Overall he has specialized for more than 15 years in Mutual Legal Assistance and combating Organized Crime. Before joining Eurojust in 2001 he was Head of Division in the Ministry responsible for MLA and extradition matters.



**2. Paola Fiore** has a background in judicial and international matters in the Ministry of Justice since 1992. She worked for seven years as legal assistant to a prosecutor in the Direzione Nazionale Anti-mafia where she dealt with co-ordination of issues related to organised crime. In 2000 she was involved in the inter-ministry working group set up to implement the Italian law on Immigration and Trafficking in Human Beings. She has been the assistant to the Italian National Member in Eurojust since 2001.



**3. Jean-Francois Bohnert** is deputy national member for France. He has 19 years' experience in the French judiciary. He began his career as a prosecutor in Strasbourg and worked afterwards as an investigating magistrate at the French military court in Germany. Subsequently he was for nearly five years the French liaison magistrate in Germany based in Bonn and later in Berlin.



**4. Jolien Kuitert** is the deputy national member for The Netherlands. She is a Public Prosecutor based at the National Public Prosecutor's Office in The Netherlands where she deals with international co-operation in the fields of combating organised crime. She is also the contact point for the Public Prosecutors Service in the European Judicial Network.



**5. Sanna Palo** is deputy national member for Finland. She is a Finnish police officer with a legal background. She was a legal secretary in the Ministry for Foreign Affairs for two years and a judge in criminal cases for a year in Helsinki. She has also spent four years in Helsinki working on mutual legal assistance matters at the Finnish National Bureau of Investigation.



**6. Ola Löfgren** is deputy national member for Sweden. He has been working as a prosecutor for 10 years. He has experience in prosecuting all types of serious crime and he spent time working at the Economic Crimes Bureau in Stockholm. He has several years' experience in international co-operation at the Office of the Prosecutor General in Sweden. He was also part of the Swedish team in the negotiations in Brussels to agree the Council Decision setting up Eurojust.



**7. Rajka Vlahovic** is deputy national member for the United Kingdom. She has 12 years' experience as a prosecutor in central London and is a Higher Court Advocate. At the Crown Prosecution Service she dealt with a wide range of serious cases including the prosecution of war crimes. Prior to joining Eurojust she was at Her Majesty's Customs and Excise Solicitor's Office where she was responsible for international mutual legal assistance and extradition cases.



**8. Ann den Bieman** has been a prosecutor with Scotland's prosecuting authority, the Procurator Fiscal Service, since 1996. In March 2000 she was seconded to The Netherlands as one of the prosecutors involved in the Lockerbie trial. She subsequently joined Eurojust, where she works as an assistant to the national member for the United Kingdom.



**9. Anne Delahaie** has a background in the Ministry of Justice since 1979. She graduated in law in 1986. In the Ministry of Justice she was involved in International Judicial Co-operation in criminal matters and in bi-lateral and multi-lateral negotiations (Schengen EU, Council of Europe, and the UN). Since 2001 she has been an assistant to the French national member of Eurojust.

## Joining the College in 2004



**1. Johan Reimann** has worked for 25 years in the Danish judiciary, *inter alia* as a prosecutor with the district attorneys of Copenhagen and of Zealand, as head of the police office in the Ministry of Justice and as a police auditor. Prior to his appointment to Eurojust he was deputy permanent secretary in the Ministry of Justice with responsibility for the general administration of budget and personnel for the Danish police and prosecutions.



**2. Solveig Wollstad** has over 15 years' experience as a prosecutor dealing *inter alia* with organised drug-related and other serious crime cases. Before becoming the national member for Sweden she was a Chief Public Prosecutor in Sweden and head of the international unit of the Public Prosecution Authority for Linköping in Sweden. She was also a Swedish EJN contact point.



**3. Natalie Barclay Stewart** has almost 5 years' prosecuting experience and is replacing Ann Den Bieman whilst she is on maternity leave. She is seconded from the Crown Office and Procurator Fiscal Service in Scotland on a part-time basis. At Crown Office she works in the International Division which deals with mutual legal assistance and extradition cases.

## Administration



**1. Ernst Merz** graduated in law in 1981 and was appointed and served as a judge in Germany until 1987. He was then detached to the Ministry of Justice of Rhineland-Palatinate and Thuringia. Between 1992 and 1999 he was the Director of the Academy of European Law (ERA) in Trier. In 2000 he was appointed as President of the Social Court Koblenz and acted as first Secretary General of the European Judicial Training Network. In May 2002 he became provisional Administrative Director of Eurojust and in September 2002 he was appointed as Administrative Director.

## GUIDELINES FOR DECIDING

### “WHICH JURISDICTION SHOULD PROSECUTE?”

In November 2003 Eurojust organised a seminar to discuss and debate the question of which jurisdiction should prosecute in those cross border cases where there is a possibility of a prosecution being launched in two or more different jurisdictions. The objective of the seminar was to establish some guidance which would assist Eurojust when exercising its powers to ask one state to forgo prosecution in favour of another state which is better placed to do so.

The seminar delegates included practitioners from all EU member states from most of the EU accession states as well as representatives from the Commission, the Council Secretariat, Europol and OLAF. There were a series of presentations and four workshops with case studies to help discuss potential criteria. The debates were enriched by the presence, as speakers and participants in the workshops, of several delegates who were university professors and or academics with an interest in this area of law. We are grateful to all the seminar delegates for their contributions.

The Eurojust College offers the following guidance:

#### Generally

When reference is made to “prosecutors” in this guidance it is intended to refer not only to prosecutors but also to judges and other competent judicial authorities.

Each case is unique and consequently any decision made on which jurisdiction is best placed to prosecute must be based on the facts and merits of each individual case. All the factors which are thought to be relevant must be considered.

The decision must always be fair, independent and objective and it must be made applying the European Convention of Human Rights ensuring that the human rights of any defendant or potential defendant are protected.

Any decision should be reached as early as possible in the investigation or prosecution process and in full consultation with all the relevant authorities in each jurisdiction. The complex question of “forum shopping”, which we would define as the arbitrary selection of the venue for prosecution, has different

meanings in different legal systems and is not dealt with in this guidance. It is likely to be the subject of future discussion within Eurojust as our experience in handling this type of case develops.

As part of their discussions to resolve these cases prosecutors should explore all the possibilities provided by current international conventions and instruments, for example to transfer proceedings and to centralize the prosecution in a single member state. A number of conventions and other instruments, which have been signed but not yet ratified, could also provide assistance in the future when they have been fully implemented.

### ***Non bis in idem***

A basic principle of international criminal law and the law of national criminal jurisdictions is that a defendant should not be prosecuted more than once for the same criminal conduct. This applies even if the defendant has been acquitted of that conduct in one jurisdiction. This guidance fully supports, adheres to and endorses that principle.

### **Initial Considerations**

The first consideration should be: *"Where can a prosecution take place?"* This decision should be considered at as early a stage as possible and in any event as soon as it is realised a prosecution might take place in more than one jurisdiction.

Prosecutors must identify each jurisdiction where a prosecution is not only possible but also where there is a realistic prospect of successfully securing a conviction. Making this assessment will require expertise and knowledge, which can only be provided by experienced practitioners from the relevant jurisdictions.

### **Meeting to Discuss Action**

If the criminality occurred in several jurisdictions whose competent authorities could each institute proceedings in their own courts, there should be a meeting between nominated senior prosecutors representing each jurisdiction involved to discuss and agree where the prosecution should be mounted.

Each of the prosecutors nominated to attend such a meeting must be fully competent to discuss the issues and make decisions on behalf of the prosecuting authorities in the jurisdiction they represent. The prosecutors should apply the following guidance criteria in reaching their decisions.

### ***Reference to Eurojust***

Eurojust would expect any cases of this type, particularly where the representatives of the respective jurisdictions cannot reach agreement on where the case should be prosecuted, to be referred to it for assistance.

Eurojust would be happy to offer advice and to facilitate such meetings. If required the relevant national members of Eurojust would be pleased to be involved in these discussions. Eurojust would actively encourage all competent authorities to consider referring this type of case to it for assistance.

## **Making the Decision – “Which Jurisdiction Should Prosecute?”**

### ***A Presumption***

There should be a preliminary presumption that, if possible, a prosecution should take place in the jurisdiction where the majority of the criminality occurred or where the majority of the loss was sustained. When reaching a decision, prosecutors should balance carefully and fairly all the factors both for and against commencing a prosecution in each jurisdiction where it is possible to do so.

There are a number of factors that should be considered and can affect the final decision. All these factors should be considered at the meeting of prosecutors from the relevant states affected by the criminality concerned. Making a decision will depend on the circumstances of each case and this guidance is intended to bring consistency to every decision-making process.

Some of the factors which should be considered are:

### ***The Location of the Accused***

The possibility of a prosecution in that jurisdiction and whether extradition proceedings or transfer of proceedings are possible will all be factors that should be taken into consideration.

### ***Extradition and Surrender of Persons***

The capacity of the competent authorities in one jurisdiction to extradite or surrender a defendant from another jurisdiction to face prosecution in their jurisdiction will be a factor in deciding where that defendant may be prosecuted.

### ***Dividing the Prosecution Into Cases in Two or More Jurisdictions***

The investigation and prosecution of complex cases of cross border crime will often lead to the possibility of a number of prosecutions in different jurisdictions.

In cases where the criminality occurred in several jurisdictions, provided it is practicable to do so, prosecutors should consider dealing with all the prosecutions in one jurisdiction. In such cases prosecutors should take into account the effect that prosecuting some defendants in one jurisdiction will have on any prosecution in a second or third jurisdiction. Every effort should be made to guard against one prosecution undermining another.

When several criminals are alleged to be involved in linked criminal conduct, whilst often it may not be practicable, if it is possible and efficient to do so, prosecutors should consider prosecuting all those involved together in one jurisdiction.

### *The Attendance of Witnesses*

Securing a just and fair conviction is a priority for every prosecutor. Prosecutors will have to consider the willingness of witnesses both to give evidence and, if necessary, to travel to another jurisdiction to give that evidence. In the absence of an international witness warrant, the possibility of the court receiving evidence in written form or by other means, such as remotely (by telephone or video-link), will have to be considered. The willingness of a witness to travel and give evidence in another jurisdiction should be considered carefully as this is a factor likely to influence the decision as to where a prosecution is issued.

### *The Protection of Witnesses*

Prosecutors should always seek to ensure that witnesses or those who are assisting the prosecution process are not endangered. When making a decision on the jurisdiction for prosecution, factors for consideration may include, for example, the possibility of one jurisdiction being able to offer a witness protection programme when another has no such possibility.

### *Delay*

A maxim recognised in all jurisdictions is that: *"Justice delayed is justice denied"*. Whilst time should not be the leading factor in deciding which jurisdiction should prosecute, where other factors are balanced then prosecutors should consider the length of time which proceedings will take to be concluded in a jurisdiction. If several states have jurisdiction to prosecute, one consideration should always be how long it will take for the proceedings to be concluded.

### *Interests of Victims*

Prosecutors must take into account the interests of victims and whether they would be prejudiced if any prosecution were to take place in one jurisdiction rather than another. Such consideration would include the possibility of victims claiming compensation.



### *Evidential Problems*

Prosecutors can only pursue cases using reliable, credible and admissible evidence. Evidence is collected in different ways and often in very different forms in different jurisdictions. Courts in different jurisdictions have different rules for the acceptance of evidence often gathered in very diverse formats. The availability of evidence in the proper form and its admissibility and acceptance by the court must be considered as these factors will affect and influence the decision on where a prosecution might be brought. These are factors which prosecutors must consider when reaching any decision on where a prosecution should be instituted.

### *Legal Requirements*

Prosecutors must not decide to prosecute in one jurisdiction rather than another simply to avoid complying with the legal obligations that apply in one jurisdiction but not in another.

All the possible effects of a decision to prosecute in one jurisdiction rather than another and the potential outcome of each case should be considered. These matters include the liability of potential defendants and the availability of appropriate offences and penalties.

### *Sentencing Powers*

The relative sentencing powers of courts in the different potential prosecution jurisdictions must not be a primary factor in deciding in which jurisdiction a case should be prosecuted. Prosecutors should not seek to prosecute cases in a jurisdiction where the penalties are highest. Prosecutors should however ensure that the potential penalties available reflect the seriousness of the criminal conduct which is subject to the prosecution.

### *Proceeds of Crime*

Prosecutors should not decide to prosecute in one jurisdiction rather than another only because it would result in the more effective recovery of the proceeds of crime. Prosecutors should always give consideration to the powers available to restrain, recover, seize and confiscate the proceeds of crime and make the most effective use of international co-operation agreements in such matters.

### *Resources and Costs of Prosecuting*

The costs of prosecuting a case, or its impact on the resources of a prosecution office, should only be a factor in deciding whether a case should be prosecuted in one jurisdiction rather than in another when all other factors are equally balanced. Competent authorities should not refuse to accept a case for prosecution in their jurisdiction because the case does not interest them or is not a priority for the senior prosecutors or the Ministries of Justice.

Where a competent authority has expressed a reluctance to prosecute a case for these reasons, Eurojust will be prepared to consider exercising its powers to persuade the authority to act.

### *Matrix*

The factors which should be considered in making decisions on which jurisdiction should prosecute are set out in this guidance. The priority and weighting which should be given to each factor will be different in each case. The intention of this guidance is to provide reminders and to define the issues that are important when such decisions are made.

During the Eurojust seminar on this topic a number of delegates found it useful to apply a matrix. Whilst applying a matrix rigidly may be too prescriptive, some may find a more structured approach to resolving conflicts of jurisdiction helpful. The matrix allows a direct comparison and weighting of the relevant factors which will apply in the different possible jurisdictions.



## EUROJUST LOGO



The College adopted a logo for Eurojust in November 2003.

The logo uses strong colours and a modern style which represent Eurojust as a strong new organisation. The logo brings together a representation of Eurojust in blue as an organ of the European Union (EU) and the different interlocking shapes and colours represent the very different EU legal systems working together. Red is added to the blue and gold colours of the EU to represent the strongly contrasting legal systems within the EU and additionally to represent our will to fight against cross border crime.

The scales overlay the shapes and colours and are a world-wide symbol of justice. They are a consistent theme in the very different legal systems represented within Eurojust. The sword *restant* represents both our fight against organised crime, which is at the heart of Eurojust's objectives, and the potential sanction of the legal systems. All this is within the EU circle of stars to show Eurojust is an EU body.

The circle of stars is open and the interlocking shapes are mainly within the circle and within the EU, but also spread outside to show that Eurojust works within the EU as well as with cases and legal systems outside the EU. The open circle of stars also represents our openness to working with other systems beyond the EU and it adds to the sense of flexibility and co-operation which are key parts of our work.

We hope the logo is like Eurojust – new, modern, fresh and dynamic; we are confident that, like Eurojust, it will have significant impact.

