



Dear reader,

No current instrument provides for the binding coordination of prosecutions or determines competence criteria in the EU criminal justice area. However, the increasing number of potential conflicts of jurisdiction, taking into account the developments in cybercrime and criminal acts committed in cyberspace, as well as the call by the Lisbon Treaty, which transcribes the principle of *ne bis in idem* into EU law, have provided impetus for the creation of this issue of Eurojust News.

Under the Latvian EU Presidency in June 2015, Eurojust held a strategic seminar entitled *Conflicts of Jurisdiction, Transfer of Proceedings and Ne Bis in Idem: Successes, Shortcomings and Solutions*, followed the next day by the 9th meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (Consultative Forum), during which conflicts of jurisdiction, transfer of proceedings and *ne bis in idem* were on the agenda.

Eurojust has played a significant role in resolving conflicts of jurisdiction since its establishment. One example is the coordination of judicial proceedings after the sinking of the oil tanker *Prestige* in 2002, which caused a tremendous amount of environmental damage. Eurojust was heavily involved in the events leading to the decision on which of the involved countries was in the better position to prosecute.

As early as the Eurojust Annual Report 2003, Eurojust, as the EU's judicial cooperation unit, provided competent national judicial authorities with Guidelines for deciding which jurisdiction should prosecute, based on the outcome of a seminar Eurojust held that year to discuss the issue among Member States' prosecution authorities and Eurojust's task to advise Member States on the prevention and resolution of conflicts of jurisdiction.

In this issue, you will find information on the key concepts concerning conflicts of jurisdiction and *ne bis in idem*, and the role of the European Union, and specifically Eurojust, in resolving the obstacles encountered. Interviews with prosecutors experienced in international judicial cooperation provide further insight into the matter and are complemented with an academic perspective.

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

Michèle Coninx, President of Eurojust

Conflicts of Jurisdiction

Introduction

This newsletter addresses the field of prevention and resolution of conflicts of jurisdiction from four different angles: (1) identification and coordination of parallel proceedings, (2) criteria and decisions on which jurisdiction should prosecute, (3) transfer of proceedings, and (4) principle of *ne bis in idem*. In the strict sense, a conflict of jurisdiction concerns criminal proceedings against the same person and for the same criminal acts. These cases may lead to a *ne bis in idem* situation. In the broad sense, especially when dealing with cross-border organised crime, cases can concern the same acts but not the same persons,

or concern the same persons but not the same acts, and for this reason require a coordinated approach among the competent prosecution authorities of the involved Member States.

Basic legislation

The relevant EU legislation on conflicts of jurisdiction and the *ne bis in idem* principle is as follows:

- Framework Decision 2009/948/JHA of 30 November 2009 on the prevention and settlement of conflicts of jurisdiction in criminal proceedings (hereinafter, 'FD 2009')

IN THIS ISSUE

- 1 Introduction
- 3 Identification and coordination of parallel proceedings
- 5 Criteria and decisions on which jurisdiction should prosecute
- 7 Transfer of proceedings
- 9 Principle of *ne bis in idem*
- 10 Interviews with:
Mr Pietro Suchan
Ms Maija Andrijauska
Professor Katalin Ligeti
Mr Jorge Espina Ramos



EUROJUST

Maanweg 174

NL - 2516 AB The Hague

Tel: +31 70 412 5000

Fax: +31 70 412 5005

info@eurojust.europa.eu

www.eurojust.europa.eu

- ▶ The case law of the Court of Justice of the European Union on the *ne bis in idem* principle
- ▶ The Charter of Fundamental Rights of the European Union

Additionally, several other legal instruments in the area of criminal matters, such as the *Framework Decision on the European Arrest Warrant* (Article 16 FD 2002/584/JHA, hereinafter, 'FD EAW'), the *Framework Decision on combating terrorism* (Article 9 FD 2002/475/JHA), the *Framework Decision on attacks against information systems* (Article 10 FD 2005/222/JHA) and the *Framework Decision on the fight against organised crime* (Article 7 FD 2008/841/JHA), include relevant provisions on jurisdiction.

Definitions

Jurisdiction: 'a government's general power to exercise authority over all persons and things within its territory' (*Black's Law Dictionary*, eighth ed., 2004).

Positive conflict of jurisdiction: situation in which two or more Member States have jurisdiction to prosecute, irrespective of whether the different national authorities are in actual disagreement. Incidences of multi-territorial infringements are increasing in frequency due to an assortment of factors, including the growth in the number of cases of cross-border crime.

Negative conflict of jurisdiction: situation in which either no Member State has jurisdiction to prosecute or one or more Member States have jurisdiction, but choose not to exercise it. These cases are becoming more infrequent with the extension of competence criteria in the Member States.

Ne bis in idem principle: literally, 'not twice [for] the same [thing]', a basic principle of international criminal law that a defendant should not be convicted or acquitted more than once for the same criminal conduct. This principle applies when the defendant has been acquitted of that conduct in one jurisdiction.

Parallel proceedings: situation in which two or more investigations or actions, concerning allegations arising from the same (or substantially the same) set of facts, proceed simultaneously or successively against the same or related parties.

Eurojust's role in the prevention and resolution of conflicts of jurisdiction

Articles 82(1)(b) and 85(1)(c) of the *Treaty on the Functioning of the European Union* refer to the tasks of Eurojust in preventing, settling and resolving conflicts of jurisdiction.

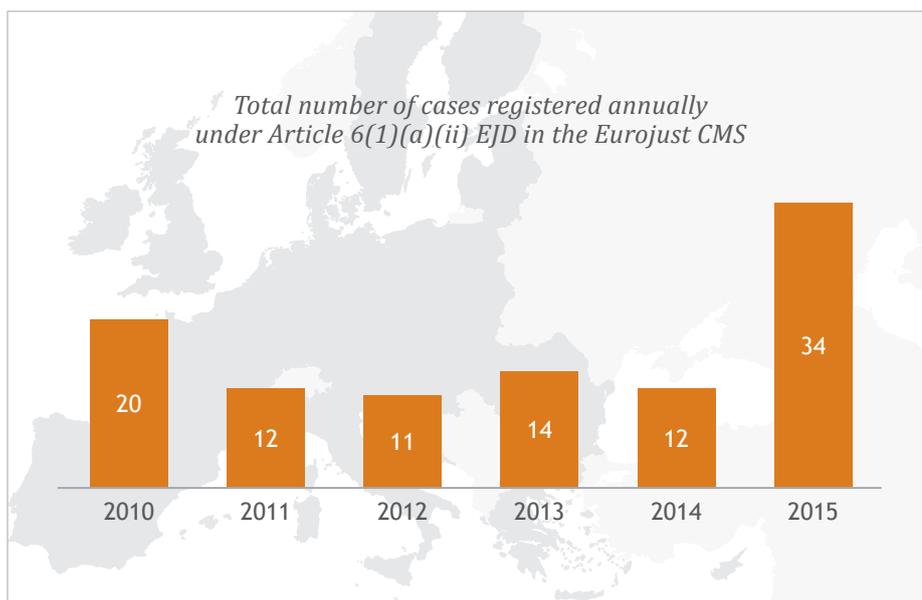
Article 85(1)(c) expressly provides that the tasks entrusted to Eurojust may

include 'the strengthening of judicial cooperation, including by the settlement of conflicts of jurisdiction...'

Pursuant to the Council Decision on Eurojust (hereinafter, 'EJD'), Eurojust may ask the competent authorities of the Member States concerned to

undertake an investigation or prosecution of specific acts. Eurojust National Members may ask their respective competent authorities to accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts, as foreseen in Articles 6(1)(a)(ii) (*see graphs 1 and 2*) and 7(1)(a)(i) EJD.

GRAPH 1

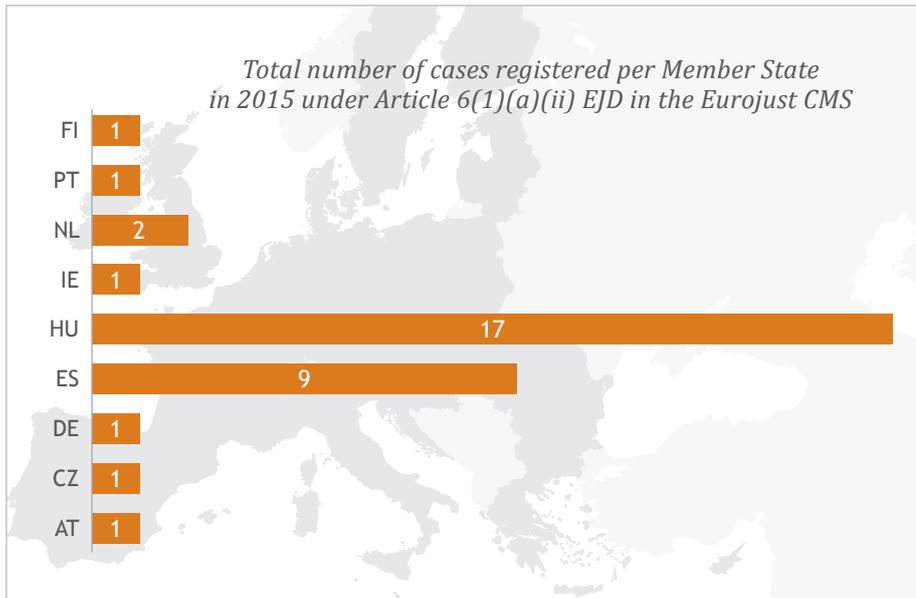


The EJD enables the College of Eurojust to intervene in the resolution of a conflict of jurisdiction if two or more National Members cannot agree on how to settle it.

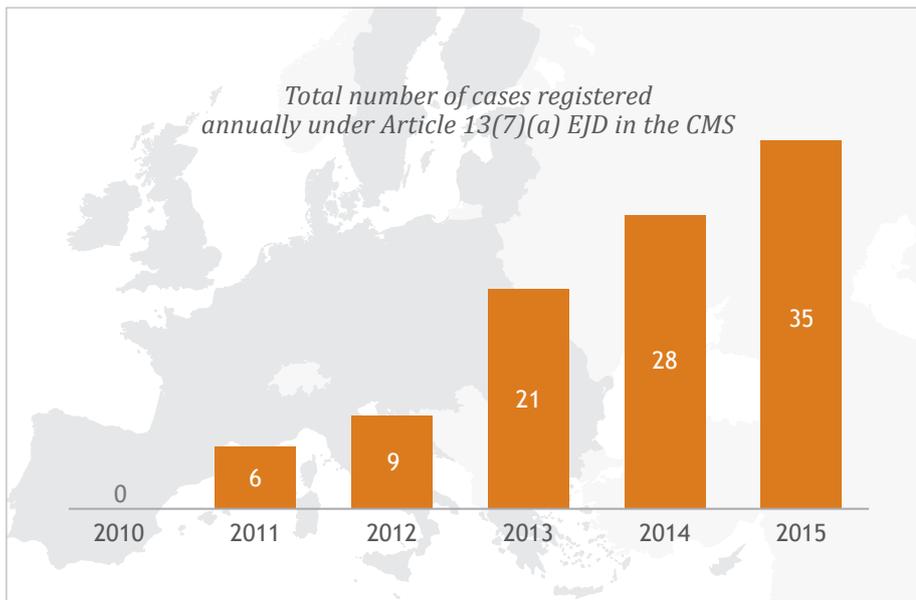
If such a situation occurs, the College shall be asked to issue a written, non-binding opinion pursuant to Article 7(2) EJD, provided that the matter cannot be resolved through mutual agreement between the competent national authorities concerned.

The Eurojust Case Management System (CMS) is a tailor-made judicial database for storing and processing all Eurojust case-related data. The CMS can be used to identify conflicts of jurisdiction, and national authorities can be

GRAPH 2



GRAPH 3



notified thereof by the concerned Eurojust National Desks.

Article 13 EJD, which was to be implemented by June 2011, obliges Member States to inform their National Members of all cases in which conflicts of jurisdiction have arisen or are likely to arise, so that Eurojust is in a position to offer its support.

In 2015, Eurojust received 35 notifications under this provision. The annual increase in the number of notifications demonstrates that Member States do

make use of Eurojust's services in this respect. However, the relatively small number of notifications received by Eurojust gives the impression that strict compliance with Article 13(7) EJD is not currently a reality (see graph 3).

These provisions of the EJD must be read together with FD 2009. Article 12 prescribes a specific role for Eurojust in assisting the national authorities if they cannot agree amongst themselves in a case involving a conflict of jurisdiction.

Eurojust's casework involving conflicts of jurisdiction most often concerns crimes of a cross-border nature, such as drug trafficking, trafficking in human beings, VAT fraud and cybercrime.

Eurojust can facilitate the exchange of information in such complex cases, and can support the discovery of links between members of criminal networks involved. Eventual decisions on which jurisdiction should prosecute can also be advanced by Eurojust.

Two important judicial cooperation tools offered by Eurojust to the national authorities to prevent and resolve conflicts of jurisdiction are coordination meetings and joint investigation teams (JITs). Strategic seminars and other thematic meetings organised by Eurojust also contribute to knowledge-sharing and awareness-raising. See sections on the Eurojust strategic seminar and Consultative Forum meeting of June 2015 below. ■

Identification and coordination of parallel proceedings

Eurojust casework indicates that, in principle, *all* types of crime can lead to parallel proceedings, including crimes that occurred within the territory of only one Member State. For example, if a person has become a victim of a crime while travelling, he or she will sometimes report the incident both in the Member State in which the crime occurred and in the Member State of origin after having returned home, which can then lead to parallel proceedings.

The detection of parallel proceedings is crucial to ensure coordination. Article 5 of FD 2009 obliges the competent authorities of a Member State that have reasonable grounds to believe that parallel proceedings are being conducted in another Member State to contact the competent authority of the latter Member State.

Cases are, for example, identified via police cooperation or when mutual recognition or mutual legal assistance (MLA) requests are sent to a competent authority in another Member State or when defendants or their counsel mention such proceedings during investigations.

Parallel proceedings can also be detected if Eurojust is informed of competing European arrest warrants (EAWs) on the basis of the FD EAW. On some

occasions, parallel proceedings can come to light in the framework of coordination meetings that are held at Eurojust or if Eurojust is contacted by national authorities to solve diverging views on the scope and application of the principle of *ne bis in idem*.

Parallel proceedings can be considered beneficial in combating crime in the European Union, provided that they are performed in a coordinated fashion. Parallel proceedings enable

prosecutors to gain an overall picture of complex cases, to exchange information and to clarify links between different parts of a network, and to facilitate subsequent decisions on which jurisdiction should prosecute.

Possible drawbacks stemming from parallel proceedings - such as waste of resources, risk of mutually jeopardising each other's investigations or *ne bis in idem* problems - tend to arise in the absence of coordination. ■

Eurojust strategic seminar

The Eurojust strategic seminar, *Conflicts of Jurisdiction, Transfer of Proceedings and Ne Bis in Idem: Successes, Shortcomings and Solutions*, jointly organised by Eurojust and the Latvian Presidency, took place on 4 June 2015.

The purpose of the seminar, which brought together practitioners from the Member States, academics and EU institutions as well as Eurojust College members, was to identify difficulties, best practice and possible improvements, and the role Eurojust plays in resolving such conflicts.

The meeting was chaired by the President of Eurojust, Ms Michèle Coninx, and opened by Ms Maija Andrijauska, Prosecutor of the International Cooperation Division of the Office of the Prosecutor General of Latvia (*see* interview with Ms Andrijauska below).

One of the issues discussed during the strategic seminar was the importance of the principle of *ne bis in idem*, as reflected in Article 54 of the Convention Implementing the Schengen Agreement of 19 June 1990 ('CISA') and the Lisbon Treaty. The right to not be tried or punished twice in criminal proceedings for the same criminal offence is clearly established in Article 50 of the Charter of Fundamental Rights of the EU ('CFREU').

The powers of Eurojust under Articles 6 and 7 EJD and the *Eurojust Guidelines* of 2003 (*see* below) in relation to prevention and resolution of conflicts of jurisdiction were highlighted as strong mechanisms to resolve conflicts of jurisdiction in cross-border crime cases. Eurojust's role in facilitating the exchange of information, coordination meetings and JITs were identified as important tools. Amongst the challenges identified during the seminar was



the importance of detecting parallel investigations at the earliest possible stage. Some participants stressed the need for the promotion of FD 2009 and Article 13(7) EJD among practitioners.

For further information on this strategic seminar, please see the Eurojust website: <http://www.eurojust.europa.eu/Practitioners/operational/strategic-seminars-meetings/Pages/topical-events-reports.aspx#Jurisdiction-2015>.



Consultative Forum meeting

The 9th meeting of the Consultative Forum, which was convened by the Latvian Presidency and held at Eurojust on 5 June 2015, assembled Prosecutors General and Directors of Public Prosecutions of the Member States (hereinafter, 'Forum members'), academics, European institution representatives and Eurojust College members.

Forum members provided contributions to questions regarding identification and coordination of parallel investigations; criteria to determine which jurisdiction should prosecute; transfer of proceedings; and the application of the principle of *ne bis in idem*. Forum members shared experience and made valuable recommendations on how to deal with these issues.

During the meeting, the *Eurojust Guidelines for deciding which jurisdiction should prosecute* (hereinafter, 'Eurojust Guidelines') (see below) were reassessed and a revised version will be provided by Eurojust in 2016. Most Forum members reconfirmed the necessity for a flexible consultation procedure and did not see the need for a new EU legal instrument.

For further information on the Consultative Forum, and conclusions on this topic, please see the Eurojust website: <http://www.eurojust.europa.eu/Practitioners/networks-and-fora/consultative-forum/Pages/forum-prosecutors-general-and-directors-public-prosecution.aspx>.



Any decision made on which jurisdiction is best placed to prosecute must be based on the facts and merits of each individual case.

Criteria and decisions on which jurisdiction should prosecute

- ▶ Each case is unique. Consequently, any decision made on which jurisdiction is best placed to prosecute must be based on the facts and merits of each individual case.
- ▶ The decision must always be fair, independent and objective, and must be made by applying the European Convention of Human Rights to protect any defendant or potential defendant.
- ▶ Any decision should be reached as early as possible in the investigation or prosecution phase and in full consultation with all the competent authorities in each jurisdiction.

Prosecutors, judges or other competent judicial authorities should explore all the possibilities provided by current international conventions and instruments, e.g. to transfer proceedings and to centralise the prosecution in a single Member State. A number of conventions and other instruments, which have been signed but not yet ratified, can also provide assistance when fully implemented.

At present, no common criteria are laid down in an EU legal instrument to decide where to prosecute in cases of conflicts of jurisdiction. Therefore, the criteria actually used by national authorities and the weight given to each of them may vary.

The majority of Member States do not have set criteria for deciding on the best place to prosecute in conflicts of jurisdiction cases.

Eurojust Guidelines

The *Eurojust Guidelines for deciding which jurisdiction should prosecute*, which were published in the Eurojust Annual Report 2003 as an outcome of the seminar organised by Eurojust in November 2003, are considered very useful to practitioners, providing a list of criteria to consider without establishing a rigid hierarchical concept.

Even though 'territoriality' - and particularly the place in which the majority of the criminal acts took place - remains a dominant criterion, it is not the only decisive factor.

For example, in cross-border cases in which criminal acts take place in different Member States, other factors - such as the nationality/place of residence of the defendant(s) and/or the victims(s), the more advanced stage of the proceedings, the broader scope of the investigations, or the place in which most evidence is present - often play a decisive role. If the criminal offence took place within one Member State, the decision to prosecute the case in another Member State may still be preferable.

Conflicts of jurisdiction are normally settled consensually between the national authorities, including during meetings at Eurojust, or in the framework of JITs.

Formal recommendations by National Members are the exception and tend to be limited to specific Member States that are often bound to do so by their national legislation.

Formal recommendations by the College (Article 7(1)(a)(ii) EJD), or written non-binding opinions by the College (Article 7(2) EJD), are exceptional.

For the period 2003-2015, four cases were registered at Eurojust on the basis of Article 7(1)(a)(ii) EJD, concerning an environmental crime case, a fraud case, a murder case, and a VAT fraud case, respectively. Article 7(2) EJD has not yet been applied. ■



Extradition and surrender of persons

Consideration of the capacity of the competent authorities in respective jurisdictions to extradite or surrender a defendant.

Proceeds of crime

Consideration of the powers available to restrain, recover, seize and confiscate the proceeds of crime, including the effective use of international cooperation agreements.

Location of the accused

Decision on whether to prosecute in the jurisdiction of location or to initiate extradition proceedings or transfer of proceedings.

Attendance and protection of witnesses

Consideration of the willingness of witnesses both to give evidence and, if necessary, to travel to another jurisdiction to give that evidence, including, 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)).

Consideration of the safety of witnesses or those who are assisting the prosecution process, including, for example, the possibility of choosing the jurisdiction that is able to offer a witness protection programme.

Length of proceedings

Consideration of the estimated length of proceedings, taking into account the popular maxim, 'justice delayed is justice denied'.

Interests of victims

Consideration of the interests of victims and whether they would be prejudiced if a prosecution were to take place in one jurisdiction rather than another, including the possibility of victims claiming compensation.

Legal requirements

Consideration of the possible effects of a decision to prosecute in one jurisdiction rather than in another and the potential outcome of each case, including the liability of potential defendants and the availability of appropriate offences and penalties.

Evidential problems

Assurance of the availability of reliable, credible and admissible evidence, e.g. courts in different jurisdictions have different rules governing the acceptance of evidence, which is often gathered in different formats, applying different procedures and formalities.

Sentencing powers

Consideration of the sentencing powers to ensure that the

potential penalties available reflect the seriousness of the criminal conduct, without automatically choosing the jurisdiction with the highest penalties.

Resources and costs of prosecuting

Consideration of the cost 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 if all other factors are equally balanced.

Transfer of proceedings

The Initiative for a Council Framework Decision on transfer of proceedings in criminal matters, the latest EU legal instrument adopted in the field of conflicts of jurisdiction, is the outcome of discussions initiated by the Commission's Green Paper on Conflicts of Jurisdiction and *ne bis in idem* in criminal proceedings (COM (2005) 696). It was put forward in 2009 by 16 Member States. The draft Framework Decision also foresaw several criteria which should be taken into account for a transfer of proceedings. These criteria included (i) the territory on which the crime was committed, (ii) the effects or damage caused by the offence, (iii) residence of the suspect, (iv) location of the evidence, (v) ongoing proceedings in relation to the same suspect, (vi) ongoing proceedings in relation to the same or related facts involving

other persons, and (vii) the place of residence of the victim(s). In addition, the draft included a procedure for requesting the transfer of proceedings, as well as a mandatory follow-up by the requested Member State. Discussion on this instrument halted with the entry into force of the Lisbon Treaty.

Legal issues

The 1972 European Convention on the Transfer of Proceedings in Criminal Matters can only be used by prosecution authorities if ratified by all Member States involved. In the absence of ratification of this Convention, some national authorities rely on Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters in conjunction with Article 6(1) of



the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the EU. In addition, the United Nations Convention against Transnational Organised Crime is used. The use of these different legal instruments can create difficulties in practice.

Practical issues

For proceedings to be transferred, the entire case file must be translated, in some cases entailing the translation of several thousand pages. The cost, quality and speed of translation of the entire file needs to be made on the basis of a preliminary assessment of the case and thus before a final decision on the transfer of proceedings has been taken.

Case example 1 - Drug trafficking, parallel investigations and *ne bis in idem*

The number of drug trafficking cases referred to Eurojust has steadily increased, with 283 cases handled in 2014. Drug trafficking was the second most common crime type in Eurojust's casework for 2014.

In 2013, two trucks bearing Dutch license plates, coming from Spain and driven by two Dutch nationals, were subjected to an inspection by French customs officers. In the first truck, the investigators found and seized 901 kilograms of cannabis. While no cannabis was found in the second truck, a hiding place for drugs was discovered.

The two Dutch nationals were arrested by the French authorities and an investigation into an alleged conspiracy to import drugs was opened against them in France. According to their testimonies, the two drivers worked for the same criminal network, operating in three Member States. The drugs were picked up in Spain, France was a transit country and the Netherlands was the end destination. A suspect was identified as the head of logistics of this drug trafficking network. A parallel investigation into the same criminal group was being carried out in the Netherlands for drug trafficking and money laundering.

The support of Eurojust was requested to coordinate these parallel investigations and to facilitate the execution of MLA requests, particularly to avoid facing a *ne bis in idem* issue. A coordination meeting between France, the Netherlands and Spain was held in March 2014, at which participants agreed first to send an MLA request from the Netherlands to France to obtain a copy of the French file and to carry out an interview with the two arrested suspects, and second that France would send an MLA request to Spain to verify the confession of one of the two suspects and to clarify the precise involvement of the company serving as pick-up location for the drugs.

The Spanish authorities confirmed the pickup location as well as its owner; a Dutch national residing in Spain, and identified his connection to suspects arrested in France. The Dutch national was arrested as a member of the investigated criminal organisation.

Eurojust's work in this area

Eurojust's casework confirms that the transfer of criminal proceedings is considered to be an indispensable option to settle jurisdictional issues. On the basis of Eurojust's casework, several causes for difficulties in transferring criminal proceedings could be identified:

- ▶ lack of a derivative jurisdiction clause, which can lead to situations in which Member States are reluctant to take over proceedings on the basis of a lack of jurisdiction, for example in cases of VAT fraud committed in several Member States;
- ▶ a clear interest on the part of the requested State to accept the transfer of proceedings is not always easily established;
- ▶ transfer of proceedings is often time-consuming and, in the absence of tight deadlines, a decision is not made quickly, creating difficulties with statutory time bars in other jurisdictions;
- ▶ the risk that cases are transferred to another Member State but then closed without further investigation and, sometimes, without any clear explanation of the reasons for the closure;
- ▶ the possibility of direct contact between judicial authorities, which has become a main feature of the EU's criminal justice area, is not available under the 1972 Council of Europe Convention, and is sometimes used as an argument for not using this instrument, but instead Article 21 of the 1959 Council of Europe Convention on mutual assistance in criminal matters, in conjunction with Article 6(1) last paragraph of the 2000 EU Convention on mutual assistance in criminal matters;
- ▶ partial transfer of proceedings, with different suspects involved, is not always easily agreed upon;
- ▶ investigations that are being carried out in the requested Member State can impede a transfer of criminal proceedings;
- ▶ differences in substantive criminal law between the Member States (e.g. different constitutive elements of a specific crime) or procedural criminal law (e.g. different rules on the gathering and admissibility of evidence) can complicate the transfer of proceedings;
- ▶ translation cost and quality; and
- ▶ Member States that have not foreseen the transfer of criminal proceedings in their criminal procedural code and that follow the principle of legality are prevented from considering a transfer of proceedings if they have jurisdiction over the crime that has been committed.

Eurojust's coordination meetings and JITs serve to find solutions and to address many of the issues mentioned above and to facilitate judicial cooperation and coordination and build mutual trust among the prosecution authorities of the Member States. ■

Principle of *ne bis in idem*

If parallel proceedings are not detected at an early stage and coordinated, a *ne bis in idem* or double jeopardy situation may arise.

The *ne bis in idem* principle is included in many national, European and international legal instruments. Within the European Union's Area of Freedom, Security and Justice, the main legal sources are Articles 54 to 58 CISA and Article 50 CFREU. Moreover, the principle is also included as a ground for refusal in a large number of EU instruments on judicial cooperation in criminal matters, including mutual recognition instruments, such as the FD EAW.

According to Article 54 CISA,

[a] person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party.

Article 50 CFREU states that,

[N]o one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

Case law of the Court of Justice of the European Union (CJEU)

The CJEU's case law on the *ne bis in idem* principle has helped clarify certain questions. Despite a different wording in various legal provisions, the CJEU has attempted to take a uniform approach to the *ne bis in idem* principle in its case law. However, some grey areas remain. For instance, if acts were committed within one criminal organisation, the CJEU has not decided whether one Member State can prosecute the individual acts while another Member State prosecutes membership in the criminal organisation.

Case example 2 - EAW and conflict of jurisdiction

Eurojust has continued to develop its assistance to Member States in the execution of EAWs. A conflict of jurisdiction can arise when two or more Member States issue an EAW to surrender the same person. Under Article 16(2) FD EAW, Eurojust may be requested by the executing judicial authorities to provide advice on the place of surrender of a person who is the subject of EAWs issued by two or more Member States. In 2014, Eurojust was requested to provide such advice in four cases. In such cases, Eurojust plays a vital role by providing advice and expertise at an early stage either through negotiation or direct contact at Eurojust coordination meetings.

Italy issued an EAW for a Tunisian national who had previously been sentenced in a case concerning the trafficking of drugs in 2009 and 2010. The individual was arrested and detained at an airport in Belgium in March 2014. After the arrest, Belgium received another EAW, issued by Luxembourg. This EAW was issued within the framework of an investigation into drug trafficking, including heroin, cocaine and cannabis, in 2013 and 2014. The Belgian Desk at Eurojust was requested to provide assistance regarding which of the two conflicting EAWs was to be given priority in this situation, and a case was opened towards Italy and Luxembourg. The determination needed to be made bearing in mind that the subject of the Italian EAW had been convicted in Italy and the decision had become final, and that the Luxembourg authorities had reason to believe that this individual headed a criminal organisation set up to sell drugs. Not surrendering this suspect to Luxembourg was believed to have the potential to harm the investigation. In addition, determining the roles of the members of the criminal organisation would be easier in the context of the Luxembourg investigation.

A formal request from the Belgian prosecuting authorities was sent to Eurojust on the basis of Article 16(2) FD EAW. An internal meeting was held between the Belgian, Italian and Luxembourg National Desks. Eurojust was requested to provide advice on the priority to be given to one of the EAWs. The legal assistance was of an urgent nature, as the Belgian court decision regarding the Italian EAW was due within days of receiving the request, and a Eurojust opinion on concurrent EAWs was duly issued. On the basis of the facts of this case, Eurojust recommended that the requested person should be surrendered first to Luxembourg. Subsequently, the requested person could be surrendered by Luxembourg to Italy for the execution of the custodial sentence on the basis of Article 28 FD EAW.

The Court of First Instance of Brussels, as well as the Court of Appeal, gave priority to the EAW issued by the Luxembourg authorities. Eurojust provided further support in the case by facilitating the Italian EAW that was sent to the Luxembourg authorities to ensure that the requested person could be surrendered from Luxembourg to Italy.

Questions have also been raised as to the effect of a discontinuation or suspension of an investigation in another Member State.

The CJEU's statement that the consequences of a discontinuation of proceedings should be determined by the law of the Member State in which the discontinuation took place does not resolve all questions, as national law may not always be clear. Practical problems arise as judicial authorities usually do not have sufficient knowledge about the legal systems in all other Member States.

Eurojust's work in this area

By facilitating the effective and early exchange of information through Eurojust coordination meetings, Member States are able to identify possible parallel proceedings, detect links with cases in other Member States, prevent conflicts of jurisdiction, and agree upon transfer of proceedings, and can also avoid unanticipated *ne bis in idem* situations.

At the moment, no initiatives are being taken on European level to introduce new legal instruments in conflicts of jurisdiction, transfer of proceedings or *ne bis in idem*.

Over the years, Eurojust has discovered significant problems related to *ne bis in idem*. Finding appropriate and practical solutions within a reasonable time is desirable but challenging. Determining whether investigations involve the same persons or facts can be difficult, especially in the early stages. Meetings between the involved Member States or coordination meetings at Eurojust are often used, at an early stage, to examine whether related facts under investigation in two or more Member States constitute 'the same facts' within the meaning of Article 54 CISA. Depending on the outcome of such an examination, parallel proceedings can either be continued or can lead to the discontinuation of the proceedings in one Member State and/or a possible transfer of proceedings.

In many cases, a possible *ne bis in idem* situation can easily be avoided, for instance, if different victims are involved. Eurojust's casework illustrates a number of situations in which the application of the principle of *ne bis in idem* still raises questions for practitioners:

- ▶ *Cases that relate to criminal activities performed by a criminal organisation and in which the question is raised as to whether the proceedings can be split up so that one Member State can prosecute membership in a criminal organisation and another Member State can prosecute individual acts.*
- ▶ *Cases in which a discontinuation of an investigation was based on an agreement between the suspect and the authorities.*
- ▶ *Cases in which a judicial authority is confronted with two requests for the execution of a sentence regarding the same person and the same facts.*
- ▶ *Cases in which an imminent risk of the co-existence of an administrative sanction and a criminal sanction are present.*

The correct application of national provisions in light of the CJEU's and ECHR's case law remains a challenging task.

In 2003, an Initiative for a Council Framework Decision concerning the application

of the *ne bis in idem* principle was brought forward by the Hellenic Presidency. The objective of this Initiative was to provide the Member States with a set of common legal rules relating to the *ne bis in idem* principle to ensure uniformity in both the interpretation of those rules and their practical implementation. In addition to an obligation for national authorities to request information should they have reason to believe that the suspect had already been convicted for the same acts, the draft Initiative included some criteria on how to determine the best place to prosecute in cases of parallel proceedings. The criteria mentioned in Article 3 of the draft were (i) the territory on which the crime was committed, (ii) the nationality or residence of the suspect, (iii) the place of origin of the victims, and (iv) the territory in which the perpetrator was found. However, this draft was not adopted by the EU legislators and the discussions were discontinued.

At the moment, no initiatives are being taken on European level to introduce new legal instruments in conflicts of jurisdiction, transfer of proceedings or *ne bis in idem*. ■

Interviews

Mr Pietro Suchan, Chair of the Eurojust Judicial Cooperation Instruments Team

Pietro Suchan is Assistant to the National Member for Italy since December 2012. He began his career as a magistrate in 1977, worked as a Counsellor of the Supreme Court since 1990, and, since 1992, served as a public prosecutor in Siena and Florence, specialising in anti-mafia prosecutions and the issuance of rogatory letters, often with the assistance of Eurojust. Mr Suchan is a speaker at conferences and official courses concerning international cooperation and, particularly, the fight against organised crime and bribery. In his capacity as Chair of the Eurojust Judicial Cooperation Instruments Team, he has dealt with the issue of conflicts of jurisdiction, preparing and participating in Eurojust's June 2015 strategic seminar.

Eurojust News: *Do you consider the identification of parallel investigations problematic? If so, what do you consider to be the main problem and how should this be addressed?*

Mr Suchan: 'The identification of parallel investigations can be really problematic

because the tools that lead to an identification sometimes do not work well. The fact that parallel investigations are taking place is not a negative phenomenon. It can be beneficial for combatting crime in the European Union, but under one condition: that coordination takes place between the investigations since the

beginning or at least in an early stage, and not in the final stage. Coordination during the final stages of the investigations can be very problematic. The solution is to exchange information.

- ▶ We need to avoid double prosecution, but not double investigations.

- ▶ The identification of parallel proceedings can take place through police cooperation, with the help of Europol and INTERPOL. Police cooperation normally constitutes the first step of identification of parallel proceedings.
- ▶ The identification of parallel proceedings is facilitated if one has a good relationship with police forces and other prosecutors.
- ▶ Another way of identifying a parallel investigation is through MLA requests. Rogatory letters contain some elements that can lead you to proceedings in other countries.
- ▶ Defendants, victims or lawyers may inform prosecutors of a parallel proceeding.
- ▶ The main problem is the availability to accept and carry out coordination. Prosecutors involved in the cases are not always easily convinced.'

Do you think that Article 13 EJD is a sufficient tool to identify parallel proceedings? Could anything be done to improve the situation?

'Article 13 is a useful tool, but it must be applied. The question is how? It is not widely applied in Italy; we sometimes have problems in receiving information from the prosecution offices. For me,

We need to avoid double prosecution, but not double investigations.

the only way to operate successfully is to have good information; to go, as Eurojust, to the national authorities. The solution is not to harass the Member States to apply Article 13; this would be the worst solution. The Member States would just adopt a hostile position. The Eurojust National Desks need to have personal and confidential contacts within their national authorities, and to exchange information with them. This system works, to an extent, but it could be improved. Eurojust roadshows can help to build these contacts.'

What is your opinion of the Eurojust Guidelines? Are they effective? Should they be updated?

'Even though they are from 2003, I believe they are still up to date. They are very flexible and not rigid. I am in favour of the Eurojust Guidelines.'

Can you give us a successful example of some of the factors involved in a transfer of proceedings?

'The principle of territoriality is important but it is not an absolute factor. There are also other very important principles, such as the domicile of the victim. For

example, if some Italian friends go to Sweden on vacation and one of them commits a crime against another one, the best place to prosecute would not be Sweden, but Italy. The victim, perpetrator and witnesses are Italian, and, therefore, after discussions, coordination and consensus, agreement could be reached to hold the trial in Italy, even though the crime was committed in another Member State. If agreement is reached, the prosecutor in Sweden will organise a formal transfer of the file to Italy (Article 21 of 1959 Strasbourg Convention). Normally, the transfer is arranged through the central authorities (Article 21 of 1959 Strasbourg Convention). This is not a good solution. Involving the Ministries of the Member States is not suitable, as here the focus shifts from justice to politics. I hope for a new framework decision that Member States will implement.'

Do you believe that judicial cooperation would be improved if Eurojust's powers were to be given binding effect?

'This topic was discussed in the College of Eurojust, during the June seminar and in the meeting with the special committee in the University of Luxembourg. The final outcome was that binding effect would not be positively accepted. The majority of participants said that they would accept Eurojust's involvement in a consultative way, but not in a binding way. I agree that binding effect would create a negative atmosphere and relationship between Eurojust and the Member States.

Issues could arise concerning the perception that Eurojust was in favour of large and powerful Member States, such as Germany, France and the UK, without protecting the interests of the smaller Member States, or vice versa. Eurojust is not a judge. Perhaps one day we will have a European Public Prosecutor, but not at the moment.

It is important to note that throughout the existence of Eurojust, there has not been a single decision under Article 7(2)



EJD. There have been approximately 40-50 cases in which Eurojust was asked to intervene to provide a solution regarding which jurisdiction would be best placed to prosecute, and in each case Eurojust has found a solution/agreement. Not one final decision has been rejected by the involved parties. This 100 per cent success rate demonstrates the effective role of Eurojust as a non-binding power.'

Do you believe that the current legal framework for resolving conflicts of jurisdiction is satisfactory or would you

agree that a common legal framework in the European Union is desirable?

'I think that we need an updated European directive, or, even better, a regulation. Reaching consensus, because of the different views in all the Member States on a binding regulation, will be very difficult, but it would be the best solution. But we do need a new framework. Italy would be in favour of a new directive.'

Do you consider that all issues related to the principle of ne bis in idem within the

European Union are sufficiently clarified or should specific issues be regulated to improve cross-border cooperation?

'Ne bis in idem is not only a legal obligation but also a question of real justice; of trust of the people in the EU framework of justice, security and liberty.'

We need to avoid double prosecutions through coordination meetings and joint investigation teams. As a prosecutor, I have indeed dismissed investigations to avoid double prosecution.' ■

Ms Maija Andrijauska, Prosecutor

International Cooperation Division of the Prosecutor General's Office of Latvia

Maija Andrijauska is a Prosecutor in the International Cooperation Division of the Prosecutor General's Office of Latvia. She began her career in the Prosecution Office of the Republic of Latvia in 2006. As a district prosecutor, Ms Andrijauska supervised the investigation and prosecuted different types of complex criminal cases, including such offences as corruption, fraud and misappropriation of private and state property, robbery, economic offences, crimes committed by police authorities and public officials, and crimes against persons. Since 2012, she has worked in the International Cooperation Division of the General Prosecutor's Office, dealing with international cooperation in criminal matters, including issuing and executing EAWs, extradition, and legal assistance in criminal cases.

Eurojust News: What do you consider to be the main problem in identifying parallel proceedings among Member States and how should this problem be addressed?

Ms Andrijauska: 'In my opinion, the main problem is detecting parallel proceedings at the early stages of an investigation, which is essential to avoid the waste of financial and human resources. Therefore, direct consultations between authorities and the effective cooperation and assistance of Eurojust are essential in this context.'

Do you believe that the current legal framework for resolving conflicts of jurisdiction is satisfactory or would you agree that a common legal framework in the European Union is desirable?

'FD 2009 is a rather good basis to prevent conflicts of jurisdiction by obliging the authority of one Member State to contact the authority of another Member State if reasonable grounds exist to believe that parallel proceedings are being conducted. However, FD 2009 contains rather general clauses about

the exchange of information and further cooperation between authorities, and gives no practical directions regarding what the authorities should do other than engage in consultations once they have identified the parallel proceedings abroad. So this framework could be considered merely as a tool for detecting a conflict of jurisdiction, which may be seen as the first step to resolving one.

To my mind, deciding whether a common legal framework addressing this issue is needed in the European Union is neither simple nor unambiguous. When a conflict of jurisdiction arises, resolving it on a case-by-case basis is preferable, taking into account the different circumstances of the individual case. For this reason, flexibility is more important than applying strict rules through legislative instruments. The factors to be considered before making a decision are well known and are also expressly or implicitly enshrined in binding and non-binding documents, such as the *Eurojust Guidelines*. Consequently, I do not see an urgent need to create a common legal framework to address this matter.'



Would you give priority to any of the factors under the Eurojust Guidelines? If so, why?

'As I mentioned above, when deciding which jurisdiction should prosecute, evaluating the circumstances of each case is necessary. In my opinion, however, criminal proceedings should take place

in the jurisdiction in which the crime was committed or the majority of losses were sustained. Doing so will enhance the investigation of the offence, simplify evidence-gathering and also facilitate the compensation or recovery of losses.

Therefore, locating the criminal proceedings in the jurisdiction in which the crime was committed or the majority of losses were sustained meets the maximum expectations of the investigation and prosecution and also ensures the fair regulation of the interests of the persons involved in the proceedings. Only if prosecution in a particular

jurisdiction is not possible should the other Member State be considered.'

Do you consider that all issues related to the principle of ne bis in idem within the European Union are sufficiently clarified or should specific issues be regulated to improve cross-border cooperation?

'This question is quite complicated. Theoretically, the scope of the *ne bis in idem* principle itself is rather clear. For example, the Criminal Procedure Law of Latvia provides a very detailed clarification of *ne bis in idem*, with an exhaustive list of circumstances in which

this principle should not be applied. I assume that the legislation of other countries contains similar provisions. The problems arise in terms of international cooperation, because different approaches to the same questions provide a fertile ground for preliminary rulings of the European Court of Justice (ECJ). As reflected in the case law of the ECJ, the legal debate will continue, and a new regulation could lead to new legal proceedings. Furthermore, the main ideas concerning the interpretation of *ne bis in idem* have already been pointed out and thus additional specific regulation in this matter is not needed.' ■

The main problem is detecting parallel proceedings at the early stages of an investigation, which is essential to avoid the waste of financial and human resources. Therefore, direct consultations between authorities and the effective cooperation and assistance of Eurojust are essential in this context.

Professor Katalin Ligeti, *Professor of European and International Criminal Law* University of Luxembourg

Katalin Ligeti is a Professor of European and International Criminal Law at the University of Luxembourg, where she is Course Director of the LL.M. programme in European Economic and Financial Criminal Law. She is a noted researcher in the fields of European criminal law, international criminal law, comparative criminal procedure and economic and financial criminal law. Professor Ligeti is Co-Coordinator of the European Criminal Law Academic Network (ECLAN), a Europe-wide network that brings together academic experts from the Member States and beyond. She is Vice-President of the International Association of Penal Law (AIDP), the oldest and largest worldwide criminal law organisation, with some 2 000 members. In this position, she is responsible for the scientific coordination of the entire AIDP.

Professor Ligeti was recently appointed as one of a group of 20 high-level experts, academics and practitioners advising the European Commission on substantive criminal law policy. She has led many major projects, including one financed by the European Commission on the proposed EPPO, as well as acting as expert for several European Parliament committees, the OECD and the ICTY. Professor Ligeti is currently leading an interdisciplinary research project on the *Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Law*, with support from the *Fonds Nationale de la Recherche* and the European Law Institute. (References to this research project appear repeatedly in the interview below.)

Eurojust News: *Do you consider the identification of parallel investigations problematic? If so, what do you consider to be the main problem and how should this be addressed?*

Professor Ligeti: 'In the context of research into this issue, we conducted several interviews at Eurojust. The main findings expressly pointed out the detrimental consequences of undetected parallel investigations. Lack of detection and, consequently, lack of coordination,

can jeopardise the investigation itself and lead to jurisdictional conflict. Early detection is therefore essential.

In the current setting, several channels or occasions to detect parallel investigations exist, but there is no systematic approach. An effective solution might be provided by technology: a Schengen Information System (SIS)-like database based on a hit/no hit system might allow judicial authorities to timely identify parallel investigations on a structural basis; of course, the

data matrix for such a database should be structured in a functional way: requiring the uploading of too much detail at this stage would have negative effects and would ultimately not fit the purpose of early detection. We are currently considering such option in our project.'

Do you believe that the current legal framework for resolving conflicts of jurisdiction is satisfactory or would you agree that a common legal framework in the European Union is desirable?



'The current legal framework presents several pitfalls. We currently have in force FD 2009, which establishes a mandatory mechanism of consultation between Member States in the event of parallel proceedings. FD 2009, however, does not provide any criteria for the choice of jurisdiction, or for the outcome of these consultations (concentration or splitting of cases? according to what criteria? transfer of proceedings? discontinuation of prosecution in the other Member State?). It is an "open-ended" mechanism that lacks transparency.

Furthermore, this instrument has been implemented by only a few Member States and our field research gave us the impression that it is barely considered - if not unknown - by practitioners.

The *Eurojust Guidelines*, on the other hand, are just a "soft law" instrument and some of the criteria they provide are excessively vague (e.g. the "availability of evidence in the proper form"; the "availability of appropriate offences and penalties").

Finally, this legal framework is "pre-Lisbon": all of those legal instruments have indeed been adopted under the previous institutional setting and they need - at least - to be recast and aligned with the Charter of Fundamental Rights (that provides, *inter alia*, for the fundamental right to a "tribunal previously established by law", Article 47).'

In the current setting, several channels or occasions to detect parallel investigations exist, but there is no systematic approach.

Do you consider that all issues related to the principle of ne bis in idem within the European Union have been sufficiently clarified or should specific issues be regulated to improve cross-border cooperation?

'Since 2003, the ECJ has developed extensive case law on Article 54 CISA and transnational *ne bis in idem*. Several elements have been clarified by the ECJ, but many issues remain to be addressed, starting from the discrepancies between the definition of *ne bis in idem* in Article 54 CISA and that provided in Article 50 of the Charter of Fundamental Rights.

The *Spasic* case attempted to provide a first answer to this specific aspect (the "execution clause" of Article 54 CISA), but much is still left to say.

Generally speaking, *ne bis in idem* is an important safeguard for individuals and a conceptual transom of the Area of Freedom, Security and Justice. However, *ne bis in idem* is a "sub-optimal regulator" for jurisdictional conflicts: the rule "first come, first served", upon which it operates, can lead to arbitrary results.'

Do you believe that the interests of the suspect and the victim are sufficiently taken into account when deciding where to prosecute?

'I think that this is an important and challenging aspect for our research. Of course, the point is not about conferring a right on the defendant or the victim to choose where to stand trial. No such right exists in criminal law. Nevertheless, those two parties might have legitimate interests that deserve consideration. In the current setting, defendants and victims have no recourse to present their views on the settlement of conflicts of jurisdiction.

Actually, the *Eurojust Guidelines* contain a reference to the interests of the defendant and the victim, but without defining the nature of those interests and, more

importantly, leaving their assessment to prosecutors. With particular regard to the interest of the defendant, this situation might be highly problematic. During our field research, we had the impression that even prosecutors feel uneasy about assessing such interest in the context of the *Eurojust Guidelines*.'

Please explain whether, and possibly why, a new EU legal instrument addressing any current difficulties in relation to conflicts of jurisdiction is needed.

'The Treaty on the Functioning of the European Union (TFEU) contains a clear mandate to the legislator on conflicts of jurisdiction. Article 82 par. 1 lett. b) TFEU is worded in terms of an obligation to act at EU level to both "prevent and settle" conflicts of jurisdiction between the Member States. In addition, Article 85 TFEU specifically mentions the resolution of conflicts of jurisdiction as one of the specific tasks that should be assigned to Eurojust. In my view, the insistence of the Treaties on conflicts of jurisdiction is a clear acknowledgment of the existence of a problem.

On the other hand, since 2003, we have witnessed several interventions of the ECJ on European *ne bis in idem*: it must be borne in mind that a transnational *ne bis in idem* situation is always the downstream consequence of an undetected or unresolved conflict of jurisdiction. The very existence of such extensive case law on Article 54 CISA indirectly proves that we have a problem of jurisdictional conflicts.

Therefore, we need a coherent regulatory mechanism to avoid *ne bis in idem* from the outset and to determine - in compliance with the Charter of Fundamental Rights - the best-placed jurisdiction to prosecute.'

How do you see the role of Eurojust in the area of conflicts of jurisdiction now and in the future?

'Eurojust is already entrusted with the settlement of conflicts of jurisdiction.

However, the current legal framework presents several limits, starting with the operational flaws of Article 13(7) EJD and ending with the absence of clearly defined powers of Eurojust on the settlement of a jurisdictional conflict in the event of disagreement.

Although the current consensual approach may appear as a “best option”, the possibility of a binding solution in the latter case should not be ruled out. As for the future, an increasingly important role should be assigned to Eurojust. As we said before, there is a

Treaty mandate for this. In this perspective, our research team is currently developing different proposals for a new instrument on the prevention and settlement of conflicts of jurisdiction; the role of Eurojust is central to our reflections.’ ■

Jorge Espina Ramos, Seconded National Expert for Spain at Eurojust

Jorge Espina Ramos is a Public Prosecutor. He joined Eurojust as Seconded National Expert (SNE) for Spain in March 2015. From 2006 until his appointment at Eurojust, Mr Espina was Deputy Prosecutor at the International Cooperation Unit of the Spanish General Prosecutor’s Office as well as EJNI and IberRed contact point. He has also worked as SNE for the European Commission (2005-2006), and as Resident Advisor and Project Leader in Twinning against Corruption in Slovakia (2001-2003 and 2008).

Eurojust News: *What is the current position of Spain with regard to dealing with conflicts of jurisdiction?*

Mr Espina Ramos: ‘We have had significant legal changes in Spain during 2015 concerning the issue of conflicts of jurisdiction. On the occasion of the new law adapting our legislation to the 2009 Eurojust Decision, FD 2009 has finally been transposed through Act 16/2015 (the ‘Act’). It entered into force on 9 July 2015.

No legal criteria existed to guide judicial authorities in determining which jurisdiction should prevail in case of conflict prior to the entry into force of the Act. According to Article 32.5 of the Act, when attempting to solve a conflict of jurisdiction, the judge or court

g. Legal qualification of the criminal behaviour and possible penalties under the various national criminal laws of the Member States involved in the conflict of jurisdiction.’

Do the above-mentioned legal criteria reflect the Eurojust Guidelines?

‘Yes, indeed. Most of these criteria follow the suggestions made in the *Eurojust Guidelines*, some of which also appear in Article 7.2 of Framework Decision 2008/841/JHA on the fight against organised crime, and in Recital n° 9 of FD 2009, but having them included in the law means a qualitative step forward, which improves the previous situation in which only guidelines or suggestions could be considered by judges.’

Do you believe that this newly modified Spanish legal framework for resolving conflicts of jurisdiction is satisfactory or are some aspects missing?

‘I think legal certainty is always crucial in the criminal field, even in areas such as this one, in which enough flexibility to consider the details of each case and the interaction with other jurisdictions must be taken into consideration. The list under Article 32.5 is undeniably a step in the right direction, but it does not cover all possible aspects. For example, Article 32.5 fails to include other criteria that could be relevant in some cases, such as the location of the suspect (as mentioned in Article 7.2.d of FD 2008/841/JHA), a criterion connected to the possibilities of surrender, or to the existence of delays in

[s]hall take into account the following criteria:

- a. Usual place of residence and nationality of the suspect.
- b. Place in which most of the offence or its most substantial part was committed.
- c. Jurisdiction under whose rules evidence has been obtained or where it is more likely that it can be obtained.
- d. Interest of the victim.
- e. Place where the proceeds or gains of crime are found and jurisdiction at the request of which they have been secured.
- f. Stage of development of the criminal proceedings in the concerned Member States.



proceedings (as suggested by the *Eurojust Guidelines* and FD 2009). Another controversial issue is the introduction of a new factor, which had not been considered before in the various sets of guidelines used to solve these conflicts, such as the consideration of various penalties in the conflicting jurisdictions. This factor is a new parameter connected to the degree of punishment. The interpretation our judicial authorities will make from it remains to be seen.'

In resolving conflicts of jurisdiction, must the judge or court give priority to any factors listed under Article 32.5?

'No. In contrast to the ongoing Council debate concerning the list of criteria to determine the prevailing jurisdiction in the context of the EPPO, no rank or priority has been established among the various criteria. All of them are listed without internal hierarchy, and judicial authorities will need to take a decision based on the concrete characteristics of each case.'

Would you agree that a legal framework is preferable to non-binding guiding principles?

'Given the broad interpretation that could be given to the list of criteria, this legislative solution may seem vague, but taking into account the previous situation (in which no legally defined parameters were set to guide the judicial authority), the complex nature of the decision (including the involvement of authorities from other Member States) and the need to consider the very concrete details and circumstances of each case, I think the Spanish approach could

be appropriate as regards a topic that, in any case, will need to rely on a significant amount of judicial discretion.

This set of rules offers at least some legal grounds to support a judicial decision on such a delicate matter which, combined with the existing tools that the Spanish legislation already provided – particularly the system whereby a judge would decide on the eventual transfer of proceedings only after receiving a report from the Prosecution Service (issued by the Prosecutor General following a recommendation from Eurojust) - may significantly improve of overall situation.' ■

For a detailed explanation of the issues involved in the *Prestige* case, please see pp. 14-15 of *Eurojust News* issue #10 on environmental crime:

[http://www.eurojust.europa.eu/doclibrary/corporate/newsletter/Eurojust%20News%20Issue%2010%20\(December%202013\)%20on%20environmental%20crime/EurojustNews_Issue10_2013-12-EN.pdf](http://www.eurojust.europa.eu/doclibrary/corporate/newsletter/Eurojust%20News%20Issue%2010%20(December%202013)%20on%20environmental%20crime/EurojustNews_Issue10_2013-12-EN.pdf)

I think legal certainty is always crucial in the criminal field, even in areas such as this one, in which enough flexibility to consider the details of each case and the interaction with other jurisdictions must be taken into consideration.



Eurojust is a European Union body established in 2002 to stimulate and improve the coordination of investigations and prosecutions among the competent judicial authorities of Member States when they deal with serious cross-border crime. Each Member State seconds a judge, prosecutor or police officer to Eurojust, which is supported by its administration. In certain circumstances, Eurojust can also assist investigations and prosecutions involving a Member State and a State outside the European Union, or involving a Member State and the Community.

Eurojust supports Member States by:

- *coordinating cross-border investigations and prosecutions in partnership with judges, prosecutors and investigators from Member States, and helping resolve conflicts of jurisdiction;*
- *facilitating the execution of EU legal instruments designed to improve cross-border criminal justice, such as the European Arrest Warrant;*
- *requesting Member States to take certain actions, such as setting up joint investigation teams, or accepting that one is better placed than another to investigate or prosecute; and*
- *exercising certain powers through the national representatives at Eurojust, such as the authorisation of controlled deliveries.*