



Consultative Forum
*of Prosecutors General and
Directors of Public Prosecutions
of the Member States of the European Union*



**CONSULTATIVE FORUM OF PROSECUTORS GENERAL
AND DIRECTORS OF PUBLIC PROSECUTIONS
OF THE MEMBER STATES OF THE EUROPEAN UNION**

9TH MEETING

THE HAGUE, 5 JUNE 2015

CONCLUSIONS

**9TH MEETING OF THE CONSULTATIVE FORUM
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Introduction

The 9th meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (hereinafter Consultative Forum or Forum) took place in The Hague on 5 June 2015 in combination with the Eurojust strategic seminar ‘*Conflicts of Jurisdiction, Transfer of Proceedings and Ne Bis in Idem: Successes, Shortcomings and Solutions*’ held the preceding day.¹ The Prosecutor General of Latvia, *Eriks Kalnmeiers*, convened and chaired the meeting of the Forum with the support of Eurojust.

Forum members discussed and reached conclusions on three main topics:

- The setting-up of the European Public Prosecutor’s Office (EPPO);
- Conflicts of jurisdiction, transfer of proceedings and *ne bis in idem*; and
- New synergies and interaction among EPPO, Eurojust, EJN, Europol and OLAF.

Moreover, during the open debate, Forum members exchanged views on two topical issues emerging from the presentations on the phenomena of foreign fighters and illegal immigrant smuggling.

1. The setting up of the EPPO and its relationship with Eurojust

(Further considerations by Forum members with regard to the relationship between the EPPO and other JHA actors are reported under the conclusions on topic 3.)

1. Forum members believe that it is essential to have an efficient EPPO, an Office able to function well and swiftly in practice. A bureaucratic system should definitely be avoided. The EPPO should be able to bring substantial added value to the work of practitioners and lead to a more effective protection of the EU financial interests (PIF).
2. While many Forum members confirm their general support for the idea of establishing an EPPO to fight PIF crimes, they also express concerns in relation to some issues that might adversely affect the efficiency and effectiveness of this new body.

¹ A separate report of the strategic seminar, including the outcome of the four workshops, is available on the Eurojust website.

3. The EU legislator should clarify as soon as possible the actual scope of the EPPO's material competence before advancing the negotiations on details concerning the EPPO's structures and procedures. Fundamental questions, such as the inclusion or not of VAT fraud among PIF crimes, can profoundly influence the number and nature of cases handled by the EPPO.
4. Clear rules concerning the concurrent competence between national authorities and the EPPO are needed to avoid problems linked to possible conflicts of jurisdiction between Member States and between Member States and the EPPO. In this regard, effective and efficient cooperation between the different legal systems is vital.
5. According to some Forum members, the structure of the EPPO, and in particular the collegial model at central level, might have a negative impact on the swiftness of its operation. Thus, it is essential to reflect on the way the EPPO will be able to operate in practice according to the chosen structure.
6. The independence of the European Delegated Prosecutors at decentralised level is an important element that should be preserved. The division of competence and respective powers of the Permanent Chambers and the European Delegated Prosecutors are not yet clarified in the draft Regulation, nor is the issue of the double hierarchy of the European Delegated Prosecutors.
7. While some Forum members consider that the Permanent Chambers should be in charge of the coordination of cross-border cases and that the operational decisions should be left to the European Delegated Prosecutors, others see the need for entrusting both the Permanent Chambers and the Chief Prosecutor with strong powers. Other Forum members consider that the current draft text reaches a good and balanced compromise on this point as both the European Delegated Prosecutors (who know the respective national system, language and law) and the Permanent Chambers (which guarantee the same level of prosecution in all Member States) have important roles to play.
8. Judicial control and review at national and/or European level are closely connected to the structure of the EPPO and need profound reflection. In particular, as the judicial control in the pre-trial phase of the criminal procedure can differ from Member State to Member State, a certain uniformity or 'threshold' should be foreseen in this respect. Moreover, judicial review at EU level might be needed in some cases to avoid different interpretations by the national courts (*e.g.* to assess whether the concerned crime is a PIF crime or not).
9. The necessity of a clear demonstration of the added value of any future reporting obligations imposed on the national authorities relating to cases below the threshold of 10,000 EUR is also expressed. In this regard the question of the purpose of such exercise is asked.
10. Another important issue where solutions need to be found, especially after the deletion of the notion of 'single legal area' from the text, concerns the way cooperation between the EPPO, participating Member States, non-participating Member States and third countries will work in practice, especially as the EPPO is not party to the relevant

international and European conventions and instruments.

11. Considering the many fundamental aspects that need to be clarified, it still seems to be too early to concretely identify how to develop synergies between the EPPO and the relevant bodies, agencies and institutions. In any case, it is very important that sufficient resources are secured to ensure that the operational capabilities of Eurojust will not be negatively affected by the establishment of the EPPO and the support that Eurojust will provide to it.
12. While some Forum members belonging to the Visegrad Group (Prosecutors General of Poland, Czech Republic, Hungary and Slovak Republic), recalling their recent 'Sopot Declaration' relating to the EPPO, draw attention to the possibility of incorporation into the ongoing discussions of some elements of the alternative 'Network Model' addressing several issues mentioned above, other Forum members underline that to defend a European interest the only solution is to create a new, strong, supranational EU body.

2. Conflicts of jurisdiction, transfer of proceedings and *ne bis in idem*: perspectives and proposals

Identification and coordination of parallel investigations

1. Parallel investigations in two or more Member States are common in practice. It is regarded as crucial by most Forum members that possible parallel proceedings are detected and the Member States involved start cooperating as early as possible in the investigations.
2. Different situations and mechanisms can lead to the detection of parallel investigations: police information; direct contact between judicial authorities; the exchange of mutual recognition or mutual legal assistance requests; or when defendants draw attention to the existence of parallel proceedings in another jurisdiction. Article 13(7)(a) of the Eurojust Decision concerning the duty of national authorities to inform Eurojust in cases of conflicts of jurisdiction is to be kept in mind.
3. The possibility of nominating a national contact point in each Member State to turn to in order to identify ongoing cases might make it easier to detect parallel investigations at an early stage. However, the fact that not all Member States have a centralised registry of ongoing investigations is seen as an obstacle to this suggestion.
4. Coordination meetings and Joint Investigations Teams (JITs) are considered excellent tools to coordinate parallel proceedings.
5. Several Member States have not yet transposed or do not yet have practical experience of the application of Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings. However, a number of Forum members welcome the consultation obligation imposed by the Framework Decision.

Criteria to determine which jurisdiction should prosecute

6. Most Member States have general criteria on internal jurisdiction, for example based on the principles of territoriality, personality or registration, but the majority of Member States do not have set criteria for deciding on the best place to prosecute in cases of conflicts of jurisdiction.
7. The Eurojust Guidelines are considered by many of the Forum members to be a useful tool to decide on the best jurisdiction to prosecute. Some Forum members do not use the Guidelines directly, but apply similar criteria when deciding where to prosecute. It is suggested to improve the Guidelines by including examples or by stipulating additional criteria. These criteria should still be listed without giving preference to one or the other, to guarantee a flexible consultation procedure.
8. Most Forum members do not, in general, see the need for a new EU legal instrument on conflicts of jurisdiction. However, some Forum members would support the adoption of such new instrument to resolve conflicts of jurisdiction provided that flexibility is ensured, while a minority is in favour of the introduction of binding criteria.
9. Most Forum members are of the opinion that the interests of the suspect and the victim are sufficiently considered when deciding where to prosecute, even though this is not the determining criterion and other factors are taken into account, in particular the effective rendering of justice. It could be considered how to make it easier for victims to claim compensation in other Member States.

Transfer of proceedings

10. Regarding the transfer of proceedings, Forum members report common challenges, including the following: lack of legal basis, lack of information on the follow up of the case, or evidential problems. The issue of translations, regarding quality and speed, is considered a great obstacle.
11. Forum members see as best practice early contact, active cooperation, assessment of the validity of evidence to be transferred and a commitment from all Member States involved to support the receiving State with whatever assistance might be needed.
12. A considerable number of Forum members see the need for a new EU legislative instrument on transfer of proceedings to overcome the current obstacles, especially with regard to the lack of a common legal basis when wanting to transfer proceedings.
13. Such instrument could include criteria for taking over the proceedings and possible grounds for refusal as well as the regulation of technical issues such as translation, minimal content of requests and deadlines.

The application of the 'ne bis in idem' principle

14. Most Forum members consider that the case law of the Court of Justice of the European Union and the European Court of Human Rights has addressed the most pressing issues in the field of *ne bis in idem*, but acknowledge that there will always be further questions which might require court decisions.
15. The concept of the 'same facts' and the question of when a case is 'finally disposed of'

still lead to difficulties in the application of the *ne bis in idem* principle.

16. However, an added value of further regulation in this area is not commonly acknowledged. While some Forum members see a danger that stricter and more detailed rules would make it more difficult to administer justice swiftly, others believe that a binding legal framework would bring advantages.
17. In general, Forum members would welcome further training and awareness-raising regarding the current legal framework and case law.

3. Towards new synergies and interaction in the Area of Freedom Security and Justice: the roles of the EPPO, Eurojust, EJN, Europol and OLAF in light of the present and future legal framework

The Roles of the EPPO, Eurojust, EJN, Europol and OLAF in light of the present and future legal framework

1. The majority of Forum members express concern about the fact that the regulations currently under negotiation will not bring more clarity to the mandates and tasks of Eurojust, EJN, Europol and OLAF, or more consistency in the way they interact among themselves and with competent national authorities.
2. As a result, practitioners fear that in the future they may be confronted with a legal framework that might create confusion over which organisation to address and which type of support to request, a situation that will not be helpful to increase the effectiveness of the support given by EU agencies and bodies and which might also have a negative effect on the work carried out by practitioners in the Member States.
3. Furthermore, Forum members believe that it remains to be seen whether the EPPO will be able to act as part of a coherent system in which the functioning of all national and EU actors is well coordinated to achieve the common goal of protecting the Union's financial interests, or whether its creation will bring additional complexity to this landscape.

Relationship between Eurojust and the EJN

4. The majority of Forum members are satisfied with the fact that the draft Eurojust Regulation does not introduce major changes to the provisions regulating interaction between Eurojust and the EJN, as their relationship requires flexibility and in the majority of Member States practitioners seem to be sufficiently aware of the different types of assistance Eurojust and the EJN can offer.
5. As a measure to further increase knowledge of their respective roles and competencies, reference is made to the Joint Eurojust-EJN Paper on how Eurojust and the EJN can assist competent authorities and the possibility in the future for Eurojust and the EJN to discuss how to put this paper into practice, as well as the possibility to present the EJN and Eurojust respective roles in the context of Eurojust's marketing

seminars.

6. In this context, some members underline the importance of the possibility to involve Eurojust National Members in the work of the Eurojust National Coordination System (ENCS), particularly when casework-related matters are to be discussed. This provision might indeed contribute to ensuring more coherence and consistency in the way cases are allocated, either to Eurojust or the EJN.

Relationship between Eurojust and Europol

7. While there is quite a broad consensus that the legislator should ensure that Eurojust and Europol continue working together in a complementary manner and without duplicating efforts, the Forum acknowledges that the current wording of the draft Europol and Eurojust Regulations will create uncertainty among practitioners on the respective roles of Eurojust and Europol when it comes to 'coordination activities'.
8. The majority of Forum members emphasise the need to ensure greater clarity on the respective mandates of Europol and Eurojust. In this respect, the EU legislator is expected to respect the judicial traditions of the Member States and the distribution of competencies between the judiciary and the police, particularly the role of prosecutors during the investigation phase.
9. On the other hand, the Forum welcomes the possibility for both Eurojust and Europol to provide financial support to JITs, as this will lead to an increase of the financial support JITs will receive in the future. However, several Forum members underline the need to have more clarity on the conditions under which both organisations will be able to provide funding.
10. The Forum also considers the provisions on the exchange of information between Eurojust's and Europol's databases as a significant step forward in ensuring better support to the competent national authorities. However, it will be important in the future to ensure that practitioners in the Member States are made aware of how the two databases will interact and the kind of information they will be able to share.
11. Furthermore, consideration should be given to the fact that this information sharing between the two organisations might in the future help Eurojust in providing feedback to national authorities with regard to possible links with other investigations.

Relationship with OLAF

12. There seems to be little interaction between judicial authorities in the Member States and OLAF. Reference is made, in addition, to the difficulty in identifying cases of common interest between Eurojust and OLAF.

Relationship between the EPPO and other JHA actors

13. Forum members stress again the importance of putting in place an efficient EPPO that brings added-value and is coherently inserted in the JHA landscape. Some Forum members emphasise the need to carefully consider possible adverse effects on Eurojust's mission from an excessive reliance of the EPPO on Eurojust's resources.

14. Given the relatively early stage of negotiations on the draft EPPO Regulation, Forum members agree that it is too soon to appraise the future scenario. Nonetheless, and particularly since an exclusive competence of the EPPO over PIF offences has been ruled out by the Council, a majority of Forum members consider that Eurojust must keep its competence over PIF crimes. Moreover, most Forum members envisage a role for Eurojust in PIF cases involving non-participating Member States and/or third States, as well as in relation to ancillary offences.
15. Forum members also refer to the need to carefully reflect upon the provisions that will regulate the information exchange between the EPPO and other JHA actors.

CONCLUSIONS