Fight against organised crime, judicial cooperation: unit Eurojust. Initiative Portugal, France, Sweden, Belgium

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The Commission has present a report on the Legal Transposition of the Council Decision setting up Eurojust with a View to Reinforcing the Fight Against Serious Crime.

Following the terrorist attacks of 11 March 2004 in Spain, the European Council of 25 March 2004 again highlighted the crucial role of Eurojust in its Declaration on combating terrorism. It urged Member States to take any measures that remain necessary to fully implement the Eurojust Decision by June 2004.

The report concludes that the state of implementation of the Eurojust Decision is far from satisfying. By the end of the deadline (September 2003), only one Member State (Portugal) had passed the complete legislation necessary to comply with the Eurojust Decision. Although by April 2004, three more Member States have adopted the relevant laws (Austria, Germany and France), in five Member States there is no implementing legislation as necessary according to their national law (Belgium, Greece, Spain, Italy, Luxembourg). At least in one of these, not even a government bill has been presented to the national Parliament by the time of the drafting of the report (March/April 2004). Since Finland has only implemented part of the Decision, on the whole six Member States still need to bring their national law into conformity with the Decision. Given the central role and high importance of Eurojust both in the fight against terrorism and in cooperation in criminal matters in general, and the various declarations by the European Council and the Council, this is disappointing.

The remaining Member States concluded that they did not need to amend their national law. The Commission has no reason to question these conclusions, although the long time needed in some Member States to examine the need for legislation shows that the legal situation is not always entirely clear. Moreover, a smooth operation of Eurojust and its cooperation with national authorities can only be achieved through transparent, clear-cut rules guaranteeing the certainty of the law. Even where legislation is not indispensable, it might thus be preferable to have guidelines or circulars clarifying certain essential issues. However, only one Member State has communicated to the Commission such an act, a decree by the Chief Public Prosecutor. On this basis, it is difficult to get an overall picture and to carry out a thorough evaluation. Future experience will have to show whether the existing rules in the Member States will suffice to give full effect to the Eurojust Decision and to make Eurojust an efficient and effective tool.

A crucial issue to be looked at in further detail in the future is the exchange of information between the competent national authorities and Eurojust. As outlined above, it is currently not yet entirely clear whether the measures taken by Member States up to now will fully ensure that the Eurojust national members receive all the information which is needed to carry out their tasks and responsibilities. The information flow should work smoothly and, in urgent cases, sufficiently rapidly. Therefore, the Commission would like to draw the Member States' particular attention to the implementation of Articles 9 (4) and 13(1) of the Decision on the national members' access to information on investigations and prosecutions.

The Commission would also like to encourage Member States to confer on their Eurojust national members the judicial and/or investigative powers that are usually conferred on a prosecutor, judge or police officer of equivalent competence under their national law. Although Article 9(3) leaves the exact scope of these powers to the Member States (apart from the question of access to information), they

should be of such nature that Eurojust can carry out its tasks and that the objectives of the Decision can be met. An excessive disparity or lack of consistency of the national members' powers can harm the effectiveness and credibility of Eurojust and hamper its cooperation with the national authorities. Therefore, further attention should be given to the issue of consistency and compatibility of the members' national powers.

Since 1 May 2004, the new Member States are also obliged to take all necessary steps to implement the Eurojust Decision. The Commission will consider whether to publish a follow-up report including the new Member States in due time. In view of the foregoing, the Commission invites all Member States to ensure a rapid and complete transposition of the Eurojust Decision and to inform it of any measures taken, particularly on the issues outlined above.