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Note on the Interparliamentary Committee Meeting for the Evaluation of Eurojust

The Conference of Speakers of the European Union Parliaments held in Vienna on 8 – 9 April 2019 asked the incoming Finnish Presidency to prepare, in a suitable manner, a common understanding on the Interparliamentary Committee Meeting for the evaluation of Eurojust, regarding aspects not regulated in Regulation (EU) 2018/1727, so that the Conference of Speakers in Helsinki will be able to reach conclusions on these matters.

The Regulation

Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), referred to in the following as “the Eurojust Regulation”, is based on Article 85 TFEU. The Treaty article, among other provisions, requires that the EU Regulations governing Eurojust “shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities”.

The Eurojust Regulation deals with the said arrangements in pt. 62 of its preamble and in Article 67.

The relevant texts are attached for ease of reference.

The Eurojust Regulation applies from 12 December 2019. It is incumbent on the European Parliament and the national Parliaments of the EU to implement the Regulation's provisions on parliamentary involvement without delay.

Interpretation of the Eurojust Regulation

1. Scope of 'evaluation'

Article 85 TFEU and the text of the Regulation makes it clear that the task of the inter-parliamentary committee meeting (ICM) is evaluation of Eurojust's activities. The preamble stresses that the ICM “should fully respect Eurojust's independence as regards actions to be taken in specific operational cases and as regards the obligation of discretion and confidentiality”. Article 67 states that the purpose of ICM's annual meetings with the President of Eurojust is “to discuss Eurojust's current activities and to present its annual report or other key documents of Eurojust. Discussions shall not refer directly or indirectly to concrete actions taken in relation to specific operational cases.”

Owing to differences in constitutional systems, Parliaments may take different approaches to the evaluation of Eurojust. Eurojust's mission is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities. The investigation and prosecu-

tion of crime is attributed, in different constitutional systems, to either the executive or the judicial branch of government. Whereas Parliaments, themselves representing the legislative branch of government, commonly scrutinise the work of the executive branch and hold it to account, the judicial branch generally is not subject to such scrutiny.

The Regulation lists subjects to be dealt with elsewhere than the ICM. Eurojust shall transmit its annual report to the European Parliament, to the Council and to national Parliaments, which may present observations and conclusions. Upon his or her election, the newly elected President of Eurojust shall make a statement before the competent committee or committees of the European Parliament and answer questions put by its members. Eurojust shall transmit to the European Parliament and to national Parliaments the results of studies and strategic projects elaborated or commissioned by Eurojust; the programming document referred to in Article 15; and working arrangements concluded with third parties. In these cases, the presumption must be that the European Parliament and national Parliaments carry out their evaluation individually – which does not preclude overlap with the ICM.

On the above basis, it is felt that the scope of the ‘evaluation’ mentioned in the Treaty and Regulation should be interpreted narrowly. Parliaments may legitimately evaluate the “executive” aspects of Eurojust’s work, such as its budget, resource management, strategic priorities and performance targets, and Eurojust’s general effectiveness in attaining these targets. Evaluation explicitly may not concern concrete actions taken in relation to specific operational cases.

2. *Forms of evaluation*

The Regulation does not specify the forms that the evaluation shall and can take. The text makes it clear that the ICM shall meet regularly to hear the President of Eurojust, who will discuss Eurojust’s current activities and present its annual report or other key documents of Eurojust. The word “discuss” indicates that the President may also face questions and comments from the ICM. One may reasonably infer that the ICM will carry out internal debates and, at its discretion, may invite other knowledgeable persons to inform its debates.

The Treaty and Regulation are silent about the “end product” of the ICM’s evaluation. It is reasonable to assume that minutes will be kept of the ICM’s meetings. One may also assume that the ICM, at its discretion, may publish some form of statement or conclusions about the results of its meeting and evaluation. This issue is one that should be left to the discretion of the ICM.

3. *The inter-parliamentary committee meeting*

The term “inter-parliamentary committee meeting” is not mentioned in the 2008 Lisbon Guidelines for interparliamentary cooperation in the EU. As the text and *travaux préparatoires* of the Regulation also do not define the term, it should not be understood as technical or fully prescriptive. However, the term ICM is well established as a term for meetings organised by the European Parliament, to which an EP Committee invites its counterparts in the national Parliaments to send representatives. The preamble of the Eurojust Regulation states that an ICM takes place “with the participation of members of the competent committees of the European Parliament and of the national parliaments”. The genesis of the Regulation permits the inference that the drafters had these Inter-parliamentary Committee Meetings at the EP in mind.

3.1 Composition: It is up to each Parliament to identify the committee or committees competent for the evaluation of Eurojust. In practice, the selection will take place when the first Eurojust ICM is convened. Normally, convocations to inter-parliamentary meetings are sent to the presiding officers of Parliaments and Chambers, who will institute the necessary procedures for appointing a delegation.

3.2 Size: The Treaty and Regulation provide no guidance as to the size of delegations to the Eurojust ICM. There is no obvious right answer to the question of the size of delegations to inter-parliamentary meetings. Experience shows that, without restraint by all concerned parties, the size issue may delay implementation of statutory inter-parliamentary cooperation.

The Finnish presidency would suggest that the size issue, while important in principle, seldom if ever has much effect on the work done. Usually, practical considerations determine the number of participants of any inter-parliamentary event. The Finnish presidency suggests that, unless a consensus emerges very quickly, it may be wise to defer a formal decision on the size issue until later.

Convocations of the first meeting or meetings of the ICM can include general, non-binding recommendations for the size of delegations. These should take into account such factors as the parity of the European Parliament and national Parliaments, and the need for delegations to represent one or more parliamentary committees and to reflect different political opinions, but also encourage economy of money and carbon emissions.

3.3 Venue and convener: According to the Regulation's preamble, the Eurojust ICM shall meet in the premises of the European Parliament in Brussels. The wording is conclusive. By inference, the duty of convening the Eurojust ICM falls on the host, the European Parliament.

3.4 Frequency: Art. 67 of the Regulation states that the President of Eurojust shall appear before the ICM once a year for the evaluation of Eurojust, to discuss Eurojust's current activities, to present its annual report or other key documents. The article does not strictly limit the frequency of the ICM's meetings, but the inference is that it meets once a year in conjunction with Eurojust's annual report. Any additional meetings would need justification related to the ICM's sole mandate of evaluation.

Conclusions of the Finnish Presidency

The Eurojust Regulation and Art. 85 TFEU require that the Eurojust ICM begin its work as soon as possible after 12 December 2019. In practice, the ICM should convene as soon as the next Eurojust annual report is completed. The ICM shall meet in the premises of the European Parliament in Brussels. The European Parliament should convene the meeting.

The Finnish Presidency considers that the first meeting or meetings of the Eurojust ICM can take place without a formal decision on the size of delegations. The ICM can decide these later. The European Parliament, as convener, may issue non-binding recommendations, bearing in mind the parity of the European Parliament and the national Parliaments; the need for delegations to accommodate representatives of one or more committees and different political views; and considerations of economy and climate protection.

The Eurojust ICM shall meet once a year, unless the evaluation task provides grounds for additional meetings.

The Eurojust ICM shall decide whether and in which form to publish the results of its evaluation of Eurojust. The Regulation requires the ICM to respect Eurojust's operational independence and the obligation of discretion and confidentiality.

It is not necessary to draft formal Rules of Procedure before the Eurojust ICM begins its work. If needed, the ICM can in due time adopt its own Rules of Procedure.

The Finnish Presidency will draft formal draft conclusions for the Helsinki EU Speakers' Conference.

Annex - fundamental legal texts

Article 85 TFEU

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

In this context, the European Parliament and the Council, by means of Regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:

- (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the coordination of investigations and prosecutions referred to in point (a);
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

These Regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.

2. In the prosecutions referred to in paragraph 1, and without prejudice to Article 86, formal acts of judicial procedure shall be carried out by the competent national officials.

Regulation (EU) 2018/1727 on the European Union Agency for Criminal Justice Cooperation (Eurojust)

(Preamble)

Whereas (...)

(62) In order to increase the transparency and democratic oversight of Eurojust, it is necessary to provide a mechanism pursuant to Article 85(1) TFEU for the joint evaluation of Eurojust's activities by the European Parliament and national parliaments. The evaluation should take place in the framework of an inter-parliamentary committee meeting in the premises of the European Parliament in Brussels, with the participation of members of the competent committees of the European Parliament and of the national parliaments. The interparliamentary committee meeting should fully respect Eurojust's independence as regards actions to be taken in specific operational cases and as regards the obligation of discretion and confidentiality.

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CHAPTER VIII EVALUATION AND REPORTING

Article 67

Involvement of the Union institutions and national parliaments

1. Eurojust shall transmit its annual report to the European Parliament, to the Council and to national parliaments, which may present observations and conclusions.
2. Upon his or her election, the newly elected President of Eurojust shall make a statement before the competent committee or committees of the European Parliament and answer questions put by its members. Discussions shall not refer directly or indirectly to concrete actions taken in relation to specific operational cases.

3. The President of Eurojust shall appear once a year for the joint evaluation of the activities of Eurojust by the European Parliament and national parliaments within the framework of an inter-parliamentary committee meeting, to discuss Eurojust's current activities and to present its annual report or other key documents of Eurojust.

Discussions shall not refer directly or indirectly to concrete actions taken in relation to specific operational cases.

4. In addition to the other obligations of information and consultation set out in this Regulation, Eurojust shall transmit to the European Parliament and to national parliaments in their respective official languages for their information:

- (a) the results of studies and strategic projects elaborated or commissioned by Eurojust;
- (b) the programming document referred to in Article 15;
- (c) working arrangements concluded with third parties.