The Dual Role of Eurojust in the Fight against Transnational Crime: An Overview

Practitioner's insight

The Dual Role of Eurojust in the Fight Against Transnational Crime: An Overview

Francesco Lo Voi and Fabio Giuffrida*

Abstract: The transnational nature of the most serious forms of modern crimes calls for domestic and police authorities to cooperate more closely, in order to tackle such criminal threats more effectively. For this reason, the European Union's Judicial Cooperation Unit (Eurojust) offers an invaluable assistance in the coordination and cooperation of national investigations: this aspect will be presented in the second section of this research note, after an introductory section which will give a short overview of the legal basis, structure and aims of Eurojust. However, the success of the operational role of this Unit could be hindered by the lack of adequate knowledge both of the very nature of transnational crimes and the instruments that the legislation of the European Union (EU) provides for in the field of criminal justice. Eurojust is called upon to play a pivotal role in this respect because it is able to facilitate more smooth-running cooperation among Member States, collecting and spreading relevant information about new forms of criminality and the best ways to cope with them. This "nonoperational" facet of Eurojust's activities will be analysed in the third section before conclusions will be drawn.

Keywords: Eurojust; Transnational Crime; Judicial Cooperation; Coordination Meetings;

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The European Review of Organised Crime 1(2), 2014, 129-146 ISSN: 2312-1653

Introduction

Eurojust was established in the EU Council Decision of 28 February 2002 (henceforth the 2002 Decision), which was subsequently amended by another Council Decision several years later (henceforth the 2009 Decision)[1]. The objectives, stated in Article 3 of the 2002 Decision, are: a) to stimulate and improve the *coordination*, between the competent authorities of the Member States, of investigations and prosecutions in the Member States; b) to improve *cooperation* between the competent authorities of the Member States; c) to *support* otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.

These tasks can only be fulfilled with reference to the areas of crime in which Eurojust is competent which are listed in Article 4 of the Eurojust Decision, which refers to the types of crimes and offences for which Europol is at all times competent to act—i.e., "organised crime, terrorism and other forms of serious crime […] affecting two or more Member States in such a way as to require a common approach by the Member States" (Article 4 Europol Council Decision). Therefore, Eurojust's core activities are devoted to the fight against transnational crimes, which have to be tackled in a coordinated manner.

As far as its structure is concerned, Eurojust is composed of 28 desks—one per Member State—and other units which support their activity (Case Analysis Unit, Legal Service, etc.). Each desk is comprised of the National Member (NM), who can be helped by two assistants at most (one of them can also be appointed as deputy NM)[2], and sometimes also by a Seconded National Expert (Article 30, par.2 Eurojust Decision). All of them, however, come from a national judiciary authority or a police body; the administration of Eurojust, on the other hand, provides each desk with one (or two) administrative assistant(s).

The body composed by all NMs is called "College" and usually holds meetings once a week, in two sessions, in order to discuss both administrative and operational matters. Furthermore, inside Eurojust, the members of the different desks work together on a voluntary basis and according to their expertise, in different teams; for the moment, nine teams have been set up: they "prepare and assist the College in its work and decision-making" (Eurojust Annual Report 2013: 17) and reflect the main areas of its work. Among others, the Counter-Terrorism Team, the Financial and Economic Crime Team, the Trafficking and Related Crimes Team and the Judicial Cooperation Instruments Team should be mentioned here.

Usually, Eurojust acts through its NMs, but for the most serious cases—listed in Article 5, par.1, lett.b)—it can act as a College: the consequence of such a difference, stated in the 2002 Decision, was that the national authorities were obliged to give reasons for refusing to comply with a request coming from Eurojust only if it had acted as a College (Article 8 2002 Decision). The 2009 Decision abolished this loop-hole. Moreover, the tasks of Eurojust acting through its NMs and as a College are quite similar and they are respectively listed in Articles 6 and 7 of the Eurojust Decision. For example, Eurojust shall give assistance to national authorities in order to improve cooperation among them and to ensure the possible best coordination of their activities, it can *ask* national authorities both to undertake an investigation or prosecution of specific acts and to take special

investigative measures, etc. However, from a linguistic point of view (Eurojust “may ask”: Articles 6, par. 1 and 7, par. 1 Eurojust Decision), it is clear that Eurojust has been established as a body *without binding powers*. Only the 2009 Decision has granted NMs more intrusive powers in the internal proceedings (Articles 9a-9f), as will be explained later.

Notwithstanding its comprehensive structure, Eurojust cannot achieve its goals without cooperating with other bodies. This aspect cannot be analysed in depth in this note, but it is worth mentioning that Eurojust has signed different Memoranda of Understanding and two Agreements with Europol, in order to increase the effectiveness of their cooperation in combating serious forms of transnational crimes. A practical Agreement on the arrangements of cooperation between Eurojust and OLAF has also been signed in 2008. Apart from the European Judicial Network, other important partners of Eurojust are represented by the third countries: agreements have been signed with Iceland (2005), Norway (2005), The United States (2006), Macedonia (2008), Switzerland (2008), Liechtenstein (2013), and Moldova (2014). Some of these third States have posted a liaison magistrate at Eurojust (e.g., Norway and USA), on the basis of Article 26a Eurojust Decision[3]: of course, the presence of such magistrates at the Eurojust’s premises makes the cooperation with the posting third States more effective.

After this short overview on Eurojust, we can describe its role in the fight against transnational crimes. Here, we assume that such a role is two-fold. On the one hand, Eurojust offers invaluable assistance in the coordination and cooperation of national investigations: the *operational* facet of Eurojust’s activities. On the other hand, the daily practices of European cooperation in the field of criminal justice have shown that the success of the operational role of Eurojust could be hindered by a lack of adequate knowledge both of the very nature of the crimes at stake and the instruments that EU legislation provide for in such a field. Eurojust is called upon to play a pivotal role also in that respect because it is able to facilitate smoother cooperation among national authorities, collecting and distributing relevant information about new forms of criminality and the best ways to cope with them: this role can be defined, in a broad sense, as “non-operational”.

The operational role of Eurojust in the fight against transnational crime

As has been pointed out, Eurojust’s mandate is to improve the coordination and the cooperation among national authorities, and at large to support them in the fight against transnational crime. In order to better understand how these aims can be achieved, the manner in which Eurojust deals with cases which fall under its competence will briefly be discussed.

After a national authority has contacted Eurojust to ask for its assistance in the frame of an internal investigation related to a transnational crime, the case is officially opened at Eurojust with the formal approval of the College. This is the so-called “level I” (Article 15 Rules of Procedure of

Eurojust). Then, the representatives of the involved desks evaluate the necessary next steps in order to fulfil the requests coming from the national authorities: if necessary, the members of the interested desks meet each other in a “level II” meeting (Article 16 Rules of Procedure of Eurojust) in order to discuss how to deal with the case. If it is not too complicated, useful solutions can be found during these meetings, but sometimes it is highly appropriate to exchange views on the ongoing (or forthcoming) investigations with the competent national authorities.

Therefore, they can be invited to the Eurojust’s premises for a “coordination meeting”[4], which is also attended by the representatives of the involved desks. Moreover, some members of the Case Analysis Unit and the Legal Service can also take part to these meetings, as well as representatives of Europol, if this agency has been involved in the specific case.

It is in these later-stage meetings that Eurojust demonstrates its value in the fight against transnational crime. First of all, Eurojust facilitates the *exchange of information* among the competent judicial authorities on the on-going investigations carried out in several Member States. Therefore, these authorities exchange views on the needs of the internal proceedings and try to overcome possible obstacles which can hinder smooth cooperation.

Moreover, on the basis of such information, the Case Analysis Unit of Eurojust is usually able to identify the possible links between domestic investigations. Consequently, Eurojust can offer its expertise to solve conflicts of jurisdiction although it has not binding powers in this field. Eurojust issued the Guidelines for deciding which jurisdiction should prosecute in 2003, listing all the elements that should be taken into account to choose the appropriate jurisdiction[5]. Moreover, the 2009 Decision introduced a procedure according to which, when the competent national authorities can not reach a mutual agreement and two or more NMs cannot agree on how to resolve a case of conflict of jurisdiction, the College can be asked to issue a written non-binding opinion on the case (Article 7, par.2 Eurojust Decision). On this issue, it has been correctly pointed out that Eurojust does not have formal competence to decide upon matters involving multiple jurisdictions. However, the very fact that prosecutors with expertise in the international cooperation of the relevant Member States can take up consultations on a specific case is *de facto* of enormous importance. The permanent structure should be conducive to the prevention of jurisdictional conflicts, multiple prosecutions and problems relating to *ne bis in idem*. (Klip, 2012:452).

A similar role can be played by Eurojust in a case of conflicting European Arrest Warrants (EAWs). It is not unusual, for example, that the handing-over of the same person is requested by different countries for the purpose of prosecution or for purposes of execution of a custodial sentence or detention order: if the interested authorities cannot find an agreement, they can seek the advice of Eurojust, on the basis of Article 16, par. 2 EAW Framework Decision. In this regard, Eurojust has issued the Guidelines for Deciding con Competing EAWs[6] in 2004. Therefore, in coordination meetings, the issue of deciding the priority of the different EAWs can be also dealt with, and Eurojust can play a pivotal role in helping the competent authorities to find an agreement.

Eurojust can also promote the *sharing of investigative paths* as an alternative to Letters of Request (LoRs, or letters rogatory) and it gives precious help in identifying the legal and factual problems which can hinder smooth cooperation among national authorities: e.g., during the coordination meetings, the topic of the possible use, in the internal proceedings, of the information exchanged at Eurojust is often dealt with. The desks can suggest the most effective solutions to national authorities, and on the basis of past experiences can identify and promote good practices. On the basis of such practices, Eurojust can also play an important lobbying role in the adoption of relevant legal instruments at EU level (Coninsx, 2012).

Moreover, the assistance of Eurojust in *promoting and facilitating the transmission and execution of the LoRs* is absolutely necessary, especially in those cases in which some differences among legal systems do not permit a prompt execution of mutual legal assistance (MLA) instruments: the presence of qualified members of national judiciary (or police) bodies in the same building usually leads to a quick solution of such problems. More precisely, the Eurojust Decision not only states that NMs have to be entitled to receive, transmit, facilitate, follow up and provide information in relation to the execution of requests for, and decisions on, judicial cooperation (Article 9b), but it also empowers them, in agreement with a competent national authority, to issue, complete and execute in their Member State such requests and decisions (Article 9c). The more intrusive powers, however, are those listed in Article 9d Eurojust Decision, which allows NMs, in urgent cases and when it is not possible for them to contact the competent national authority in a timely manner, to execute a request for, or a decision on, judicial cooperation in relation to their Member State.

However, Articles 9b, 9c and 9d have been introduced by the 2009 Decision. Only some of the Member States have implemented this Decision, so that the powers of NMs vary significantly from State to State. For those countries which have not implemented the 2009 Decision (e.g., Italy), the role of NMs in judicial procedures related to LoRs is quite limited: they can officially receive LoRs from the internal authorities and transmit them to foreign ones (or the other way round), as well as follow up their execution (Articles 3 and 6, lett.g 2002 Decision), but they cannot issue, complete or execute them in any case.

Furthermore, Eurojust can also offer its *assistance in the simultaneous execution* of investigative measures in different countries (usually, this simultaneous execution has been agreed during a coordination meeting). In this case, a “Coordination Centre” takes place at Eurojust: it is attended by the representatives of the involved National Desks and of the Case Analysis Unit, who follow and report the on-going activities which are carried out in several States simotaneously, keeping communication continuously open between the domestic judicial and law enforcement authorities. Once the measures have been taken, they are reported in a final document, which is the starting point for further discussions on the case.

Finally, Eurojust supports the *establishment of Joint Investigation Teams* (JITs)[7], which allow a smoother cooperation among the competent authorities involved in the investigations on transnational crimes. Indeed, the members of a JIT are normally allowed to take part in the

investigative measures executed in other countries and to share immediately information among them. Moreover, the results of the investigations carried out by a JIT can be used in national proceedings without resorting to the traditional means of judicial cooperation (as for example the LoRs)[8]. As far as the involvement of Eurojust is concerned, it must be underlined that NMs may not only ask the competent authorities of the Member States to set up a JIT in keeping with the relevant cooperation instruments (Article 6, par.1, lett. a), n. iv) Eurojust Decision), but are also entitled to participate in it (Article 9f Eurojust Decision)[9]; however, the NMs have to be informed about the setting up of a JIT (Article 13, par.5 Eurojust Decision).

Therefore, the operational role of Eurojust is many-sided and aims at strengthening investigations on transnational crimes, in the different ways briefly discussed. Such a role can be better understood by discussing some interesting case studies which Eurojust has recently dealt with[10].

The first example involves the terrorist attacks committed by groups of anarchists operating in various European countries. On April 24th 2010, an explosive device was found at the Fiumicino airport in Rome addressed to an Italian Police Office in Rome, later claimed by an anarchist group. Subsequently, the Public Prosecutor Office (PPO) in Rome opened an investigation and it came to light that close links between different anarchist groups operating in Europe existed. Among the others, the placement of explosive devices outside the house of a well-known Italian politician in 2003, a triple bomb attack against an Italian Police Office's premises in 2005 and other attacks on Italian targets (mainly car dealers), which took place in 2008 in another European country (henceforth, "country B"), were attributed to such groups.

For the investigation concerning the events occurred in Fiumicino, PPO Rome sent a LoR to the judicial authorities of country B and the assistance of Eurojust was requested to facilitate both the execution of the said LoR and the coordination of possible parallel investigations. Therefore, the Italian authorities and those from country B were invited to Eurojust for a coordination meeting: it was aimed at deciding a common strategy to tackle the activity of these groups and at exchanging information on the state of play of the investigations and on the state of the execution of the Italian pending LoR. After the coordination meeting, the investigations went on in the two countries, the competent authorities continued to keep in touch and at the end of the different trials arrests were ordered.

The added value of Eurojust in such a case is self-evident: apart from the logistical and practical support in organising the coordination meeting, it allowed a swift and useful exchange of information between competent authorities, while setting the basis for future similar exchanges. During the coordination meeting, moreover, the involved parties had the possibility to highlight the needs of internal investigations (e.g. the urgency in the execution of the Italian LoR) and to clarify complex issues, both factual and legal. For example, it was pointed out that the exchanged information could only be used for investigative purposes, insofar as in Italy the investigation was still covered by investigative secrecy. Furthermore, it was later clarified for which terrorist attacks the trial had been started in country B, in order to avoid problems linked with *bis in idem* issues.

Moreover, future possible developments of the investigation have been envisaged and other on-going linked investigations in Italy became known. Finally, the parties made reciprocal commitments, in order to guarantee the most effective development of the on-going investigations: for example, they assured each other prompt notification of the discovery of new evidence, which would have been then officially requested via LoR.

The role played by Eurojust in helping the authorities to get in touch has been seminal in this case, even if, after the above-mentioned coordination meeting, they decided to meet outside Eurojust. This choice is actually two-fold and shows that the process of making Eurojust the key player in the fight against transnational crime is surely ongoing but also quite complicated. On the one hand, we observe a positive trend that national authorities get directly in touch between themselves and meet at their convenience, without involving other bodies or authorities: it entails exactly the idea of judicial cooperation in the European Area of Freedom, Security and Justice.

On the other hand, however, it is undeniable that, especially for complex cases, it would be preferable to act with the assistance and the involvement of Eurojust, which can give an invaluable legal, analytical and logistical support. As it has been indicated previously, Eurojust appears to be in the right position to give advice on different and complex issues (competing EAWs, conflicts of jurisdiction, use of exchanged information, etc.), on which national authorities do not always have the same competence. Experience has shown that the reason that national authorities do not involve Eurojust in their activities is at times due to an unfounded fear that this EU body can substitute them in their investigations and prosecutions. Of course, it could never happen because the mission of Eurojust is only to *strengthen* national investigations related to transnational crimes and the coordination between Member States, it does not have similar powers to those of the national PPOs (Suominen, 2008).

Another exemplar case is the investigation called “Gomorrah”. This investigation dealt with a network of criminals—linked to certain Camorra clans—who organised a massive traffic of counterfeit products (electric generators, clothing, etc.)[11]. Such products were made in China and distributed all over the world through Naples, whereas the money was laundered via Australia and Iceland. The Italian criminal proceeding regarding these facts was opened *on request of the Italian* Desk at Eurojust[12] and the pieces of information coming from the other countries involved—through Eurojust—were extremely useful in order to gather evidence on the predicate offences of the alleged money-laundering activities. In 2010, the Anti-mafia Prosecution Office of Naples co-ordinated a major action against this group; notwithstanding difficulties[13], seven individuals were arrested and the Italian authorities seized goods and assets for more than 11 million euros, whereas simultaneous actions took place in other states to secure other important pieces of evidence. This was the final stage of a two-year long investigation opened in various European countries which led to 60 arrests and to the seizure of 8 hundred tons of counterfeit products (valued at EUR12 million).

In this case, apart from the *request to open the proceeding*, the role played by Eurojust in

promoting a common strategy and coordinating the national investigations has been seminal:

> [f]ive co-ordination meetings were held to *exchange information*, raise *awareness* on the connections between apparently low-priority crimes (counterfeiting) and organised crime cartels linked to the Camorra, and to *co-ordinate the actions* among several law enforcement and judicial authorities to carry out simultaneous operations. A specific *judicial strategy* was adopted to co-ordinate the operations (arrests and seizures), which were then carried out in several Member States to avoid dispersion of evidence or flight of criminals. (Eurojust Annual Report 2010: 42, emphasis added)

In addition, the contributions from Europol were extremely important in order to identify the criminal network, its sophisticated *modus operandi* and its money flow.

Therefore, in this case the different national authorities did not show a “reactive” approach to the transnational crime (i.e., only requesting execution of letters rogatory to other countries), but a “proactive” one (Spiezia, 2013). They constantly involved the supranational bodies (Eurojust and Europol) in their activities, always exchanging information with them and through them, in order to better tackle the serious crimes in question.

In May 2011, another important result was achieved by the Anti-mafia Prosecution Office of Naples in the so-called operation “Polvere”: 33 persons suspected of being members of the Polverino family (an important Camorra clan) were arrested. This was a very powerful criminal organisation in Italy and had strong links with Spain: the entrepreneurial skills of its boss Giuseppe Polverino allowed his criminal organisation both to acquire a monopoly of the Italian hashish market and to launder the proceedings in different activities, such as real estate and food industry. The group is also suspected of being involved in murders, extortion and firearms trafficking.

The aforementioned arrest of 33 people was only the first step of a complex investigation, which also led to the arrest of another important member of the clan in July 2011 in the Netherlands. This arrest was carried out after a coordination meeting which took place at Eurojust and during which the Italian and the Dutch authorities agreed on how to proceed for the arrest, for the issuing of the EAW and for “other necessary investigative activities requested by a letter rogatory” (Eurojust Annual Report, 2011). Giuseppe Polverino himself and other 108 persons suspected to be part of the group were then arrested, in Italy and Spain, in 2012. Once again, in this case the support of Eurojust (and especially of its Case Analysis Unit, which can work on a lot of pieces of information transmitted by the involved countries) has been seminal in order to better understand the structure of this group.

Therefore, the aforementioned examples confirm the importance of Eurojust’s role in the coordination of transnational investigations. The number of annual cases referred to Eurojust by national authorities has been increasing every year. Surely, this demonstrates the perception of the Unit’s importance by national authorities.

The non-operational functions of Eurojust

Although Eurojust's core activities are represented by its operational activities, its nonoperational ones also deserve a mention. In this way, Eurojust is in the right position "to monitor the functioning of European Union criminal justice instruments and to identify problems and deficits" (Monar, 2013: 193): e.g., Article 17, par. 7 EAW Framework Decision states that Eurojust has to be informed when the time limits for the execution of an EAW cannot be respected by a Member State. Such a monitoring role also involves the functioning of the JITs[14], on which Eurojust has gained a significant experience. For this reason, it has cooperated with Europol in the drafting of the above-mentioned JITs Manual.

Eurojust has also participated to the drafting of the European handbook on how to issue a European Arrest Warrant (2010). These two documents show that, on the basis of the daily experience of European cooperation in criminal matters, Eurojust is in an ideal position to advise national authorities on how to use the instruments at their disposal in the most effective way. The monitoring functions go hand in hand with the advisory ones.

Furthermore, Eurojust plays a pivotal role in collecting and developing strategic and operational data about the crimes under its competence, in order to better cope with them both in a national and in a supranational context. For example, in the field of terrorism, a quarterly report called Terrorism Convictions Monitor is regularly issued. It is mainly drafted by the Case Analysis Unit with the support of the CounterTerrorism Team of Eurojust and it includes an overview of court judgements and legislative innovations related to terrorism, as well as the judicial analysis of some peculiar decisions and a selection of on-going and up-coming trials. It is based both on open source information and on the information provided specifically to Eurojust on the basis of Council Decision 2005/671/JHA (whose Article 2 imposes on Member States an obligation to transmit to Europol and to Eurojust some information concerning criminal investigations, prosecutions and convictions for terrorist offences which affect or may affect two or more Member States). The competent authorities of the Member States do not always comply with this obligation in the same way and with the same regularity, so the information at Eurojust's disposal varies significantly from year to year and from State to State. In fact, the unwillingness of State to involve Eurojust in their affairs—even if it is progressively decreasing—is one of the biggest problems which Eurojust faces in all its activities (see also Busuioc and Groenleer, 2013), as has been indicated previously. Eurojust drafted and keeps updated a CBRNE Handbook (on crimes in which chemical, biological, radiological, nuclear, and explosive weapons are used) as well as a Memorandum on terrorism financing, which collects and analyses the existing international and EU instruments on terrorism financing and the state of play regarding Eurojust's involvement in the field.

Another example of the non-operational role played by Eurojust is embodied in its contribution to the Te-SAT (EU Terrorism Situation and Trend Report), drafted by Europol: the Te-SAT includes

statistical information on the diffusion of terrorism all over Europe. The data on judicial outcomes of the trials on terrorism (convictions, acquittals, final or pending verdicts, etc.) are reported by Eurojust.

Eurojust also participates in Europol's focal point ITOC, devoted to Italian organised crime. Europol's focal points have repealed the previous AWF (Analysis Working Files) and they mainly consist in an analytical work that provides useful data on different issues. Moreover, in the future, Eurojust should also participate to Europol's focal points on terrorism. Finally, Eurojust periodically organises tactical and strategic meetings on sensitive issues[15], which help to collect and spread knowledge about transnational criminality.

Therefore, also the non-operational role of Eurojust is many-sided: it comprises monitoring, advisory and analytical functions, as well as relevant activities of collecting and developing strategic and operational data. Indeed, the daily experience in the field of European judicial cooperation has shown that a successful fight against transnational criminality has to be founded on adequate knowledge of such criminality and European instruments to tackle it. Eurojust itself is extremely aware of this need and it tries to provide as much information and studies as possible, especially in the most sensitive areas (such as terrorism and organised crime).

It is self-evident that, in order to better comply with its non-operational functions, Eurojust needs a continuous exchange of information with the domestic competent authorities and, when necessary, also with third countries. For example, on the basis of Article 10 of the Agreement between the United States (U.S.) and the EU on the processing and transfer of financial messaging data from the EU to the U.S. for the purpose of the Terrorist Finance Tracking Program (TFTP), when Eurojust "determines that there is reason to believe that a person or entity has a nexus to terrorism or its financing […]" it "may request a search for relevant information obtained through the TFTP"[16].

Moreover, the exchange of information is also seminal for the operational functions of Eurojust. The more information Eurojust is provided with, the more effective role it can play in terms of improvement of cooperation and coordination among national investigations[17]. Indeed, if we have dealt with Eurojust's operational and nonoperational activities in a separate way, it was only for sake of clarity, but it is obvious that they are strictly intertwined.

A recent and on-going case, which involves an important member of the Calabrian 'Ndrangheta demonstrates this. He was arrested in Amsterdam in 2004 and the sum of money he bought with him (more than four hundred thousand euros) was seized by the Dutch authorities. After a few months, the competent Dutch Court acquitted him of the alleged offence of money laundering because there was not enough evidence. The PPO appealed this decision in the first instance, but then he renounced the appeal once he knew that a proceeding for the same offence had been opened in Italy. At the end of the Italian proceeding in October 2008, the Italian Court convicted the suspect for participation in a criminal organisation aimed at the international trafficking of drugs,

whereas it acquitted him of the offence of money laundering. After this conviction, a “preventive proceeding” (*procedimento di prevenzione*) was opened in Italy against the same person, with the view of issuing against him a “preventive confiscation order” (*confisca di prevenzione*). This is a peculiar act of the Italian legal system, which allows the confiscation of goods belonging to a person who, being seriously suspected of having links with organised crime groups, is not able to explain their origin and when such goods either result from illicit activities or have a value which appears to be out of all proportion to his licit income. The main feature of this kind of confiscation is that it can be issued *without a prior conviction* and without any relation to specific crimes.

Therefore, on the basis of the evidence gathered in the above-mentioned proceeding which ended in October 2008, in 2009 the Italian Court opened a “preventive proceeding”, at the end of which it ordered the seizure of the above-mentioned sum of money, in order to further dispose the “preventive confiscation”. The Court also issued a LoR to the Netherlands in order to execute this seizure. The Dutch authorities complied with this request and kept the seizure on the above-mentioned amount of money (which was still in force, since the arrest that took place in 2004) on the basis of the Italian seizure order, even if Dutch legislation on this matter is quite different. There has been a complaint against this decision, but the competent Dutch Court in 2012 decided that such a seizure was well-founded. Only in 2014 the final decision on the “preventive confiscation” was issued by the Italian judicial authorities and a LoR was subsequently sent to the competent Dutch authorities for the execution of the said confiscation.

A two-fold role has been played by Eurojust in this case. On the one hand, after the request of assistance had been sent by the chief of the Italian Central Anti-mafia Prosecution Office, a “general topic” was opened by the Italian Desk of Eurojust. All desks were then asked to answer questions about the non-conviction based confiscations, in order to have a clearer overview of the European *status quo* on the matter at stake. On the other hand, Eurojust’s support has been also “operational”. A coordination meeting was held at Eurojust’s premises in late 2010 and the competent judicial authorities who took part have had, first of all, the possibility of exchanging views on a sensitive issue (such as the non-conviction based confiscation). Therefore, Eurojust constituted the ideal platform both for the exchange of information between competent authorities in that case and for setting up the basis for future exchange of information, which should be transmitted through Eurojust, or even directly (but then informing Eurojust accordingly). Secondly, during this meeting, the competent authorities agreed on the best way to proceed in order to avoid that the seized sum of money was given back to the dangerous suspect.

This example shows some of the problems that can arise from the differences among European legal systems in the fight against transnational crime. This obstacle, however, can be effectively overcome if the different authorities share views on the relevant topics, trying to find the best legal solution to solve all the possible problems which come to light. In this regard, Eurojust represents the ideal platform to facilitate the dialogue among the different competent authorities.

Moreover, this case shows that the prevention and fight against transnational crime comprise the

fundamental facet of raising awareness about the transnational dimension of crimes at stake and on the need to tackle them in a coordinated matter. Therefore, there is an undeniable need to gain adequate knowledge about such phenomena in order to dismantle them in the most effective way. In that respect, Eurojust offers its assistance in operational matters, on the one hand, whilst other efforts are aimed at obtaining and then, disseminating relevant information, on the other hand. This dual role has been correctly pointed out by Vlastník (2008: 41), who has stated that Eurojust, beside being a "prosecution facilitator", is also a "trust promoter" among European judicial authorities:

(…) in order to enhance the efficiency of EU criminal justice cooperation (…) *knowledge*, *skills*, integrity and motivation of the law enforcement personnel must be promoted. Eurojust is an important player in this field, being a component of the chain of the institutional underpinning of the *trust promoting process* which requires a comprehensive policy both on a European and on a national level (emphasis added)[18].

Conclusion

Based on the previous considerations, we argue that the role played by Eurojust in the fight against transnational crime is two-fold. On the one hand, it is the ideal platform to collect and to provide information about the crime under its competence, so that it can meaningfully help the national judicial and police authorities to adequately cope with them. In other words, Eurojust strives to "become the centre of judicial know-how about crime and investigations in the European Union" (Wade, 2013: 208).

On the other hand, it is also called upon to play a more operational role, organising and having meetings among the competent national authorities, helping them to get in touch, to avoid problems in terms of *bis in idem* and to find the best way to investigate and prosecute the authors of serious transnational crimes.

The operational role of Eurojust will be even more effective in the future if the Proposal for a new Regulation on Eurojust, for the moment under discussion, will be adopted. Indeed, Article 85 of the Treaty on the Functioning of the European Union (TFEU) has empowered the Council and the Parliament to determine the future structure, operation, field of action and tasks of Eurojust by means of regulations adopted in accordance with the ordinary legislative procedure. Therefore, the European Commission has issued a Proposal for a Regulation on Eurojust in July 2013. One of the main objectives of the new Regulation is "to improve Eurojust's operational effectiveness through homogeneously defining the status and powers of NMs" (Proposal for a Regulation on Eurojust, 2013: 4).

The above-mentioned difference among the powers of NMs, indeed, has been identified in the past

as one of the main obstacles to the successful fulfilment of the objectives of Eurojust (Xanthaki, 2006; Vervaele, 2008). Insofar as a Regulation is “binding in its entirety and directly applicable in all Member States” (Article 288, par.2 TFEU), such a problem will cease to exist: the Regulation does not need any implementation in the domestic legal systems, so that all the NMs will enjoy the same status directly on the basis of the EU legislation. The NMs will also have broader powers of intervention in domestic investigations, as for example that one of ordering investigative measures in urgent cases when timely agreement cannot be reached with the competent national authorities (Article 8, par.3 Proposal).

The non-operational facet of Eurojust’s activities should also be improved, because the Proposal strengthens the provisions on the exchange of information between domestic authorities and Eurojust’s NMs (Weyembergh, 2013). However, even if (and when) this Regulation will enter into force, the effectiveness of Eurojust’s activities will remain mostly linked to the willingness of national authorities both to involve this Unit in their investigations and to exchange information with it.

Indeed, only an adequate awareness of the supranational dimension of the most serious modern crimes can lead to their effective repression. Eurojust strives to raise such awareness with its multifold activities and offers its invaluable help to coordinate domestic investigations on transnational crimes, contributing in this way to the ongoing process of establishing the European Area of Freedom, Security and Justice.

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