

“Eurojust, joint investigation teams and the sharing of means and information”

General Report on the Conference

**by Jean-Marie Huet, Department of criminal matters and pardons
(DACG)**

- Rachida Dati, Minister of Justice, wished to organise a conference in Toulouse entitled “Eurojust, joint investigation teams and the sharing of means and information”, bringing together the European players involved in judicial cooperation in the field of criminal justice.
- The aim of the conference was to give a new impetus to this form of highly original cooperation, namely the joint investigation team, of which certain Member States - including France and Spain - already have a rich experience.
- In order to better combat cross-border crime, joint investigation teams allow judges, public prosecutors and investigators in several Member States to work directly on complementary procedures and to conduct joint investigations. This makes it possible to strengthen links and ensures that information about the same criminal networks is shared more effectively.
- The very innovative nature of this form of cooperation, which is based on pooling procedures and sharing means and information, calls for a first review of how it works in practice.

- The discussions were an opportunity to consider the conditions in which joint investigation teams can be developed and to identify the best practices, likely to promote such teams and encourage their use in the best possible conditions.
- The discussions also confirmed how important it is to involve the European players - particularly Eurojust - when they are set up, as such organisations can provide logistical support (financing, material resources) and legal support (participation in the activities of the team, contribution to the prevention of conflicts of jurisdiction).
- These concerns are at the heart of the draft decision on Eurojust which will shortly be submitted to the Justice and Home Affairs Council (meeting on 24 and 25 July 2008), for its approval.
- Our review of the situation, after two days of discussions, is particularly encouraging. It confirms that joint investigation teams provide a real solution to the needs of practitioners, particularly in complex procedures. However, the solution is still insufficient and the evidence suggests that this form of cooperation is under-used.

The conference therefore provided an opportunity to identify the conditions that are necessary for joint investigation teams to be developed, so that practitioners will be encouraged to use them.

- Initially we surveyed the initiatives taken, or that are likely to be taken, both at national and EU level, in order to promote this type of co-operation. The following subjects were discussed:
 - a. At national level: The decision to set up a joint investigation team, taken in agreement with the central authority, means that practices can be harmonised within the same State and gives an impetus to this new type of judicial co-operation.

However, the decision to set up a joint investigation team must derive, first and foremost, from close collaboration between its players and from a stated willingness to work together, as a team of this type is comparable to a contract between those with responsibility for prosecutions and investigations in the various States participating in the system. The involvement of the central authority in each Member State must also facilitate contacts between the judicial authorities concerned, with the support of liaison magistrates, by assistance with the drafting of protocols of agreement and by organising meetings.

In addition, better training for the players about this type of cooperation could also be a subject for discussion, with a view to increasing the number of calls for this type of resource, which is still little known and whose implementation may worry certain practitioners, as it demands a considerable investment in time and resources ... but the significant results are worth it.

Specific training initiatives for courts specialising in organised crime could be envisaged, which would meet an immediate need.

b. At European level: The discussions that were begun in 2003, when a draft protocol was prepared, must be continued. The protocol must now be reviewed and adapted in order to take account of and resolve the difficulties that have arisen in practice since then.

The conference provided an opportunity to identify a number of practical difficulties along with the solutions to be devised to overcome them. A number of “best practices” for the joint investigation teams emerged from the discussions and can now be put forward:

- a. The usefulness and content of model agreements. The question of the adaptation of the European model was touched on. Many practitioners believe that, while remaining very flexible, it should be more complete. They would like to see more operational information, so that it can play a part in the resolution of difficulties that arise at a later date.
- b. Selection of cases: Experience shows that joint investigation teams have operated well with respect to drug trafficking and terrorism (a stage in the investigation), but their remit could usefully be extended to other areas of cross-border organised crime such as human trafficking (see proposed Franco-Belgian investigation team Paris JIRS (Specialized inter-regional Court)).

On the other hand, while not inconceivable, it seemed premature to extend the use of joint investigation teams to ordinary criminal activity, due to the resources required for implementation.

- c. The place of the various players, according to the legal system: While taking account, when the joint investigation team is set up, of the respective roles of the law enforcement and judicial authorities, better collaboration between the various players should be ensured at all stages in the procedure. In consequence, the idea of including in the standard agreement an estimated timetable for meetings between the signatory judges and public prosecutors was, sensibly, raised.
- d. The need to define a “list” of the aims of the investigation or prosecution at an early stage in the process

While such a list should be as precise as possible, it should, at the same time, remain very flexible, to allow for on-going revisions and changes in direction, depending on how the investigation develops.

This paradox is only apparent: it reconciles the dual requirements of legal safety and flexibility, which are necessary if the approach to the investigation is to constantly progress.

Criteria have been identified by which these objectives can be defined. The process requires a joint expert assessment to be carried out at an early stage, taking account of the various “perceptions” of the aims of the criminal investigation. This will lead to the definition of “**joint scope of the investigation**”, going beyond the different perceptions, which are often cultural in origin.

The definition of a joint strategy at the outset also makes it possible to anticipate difficulties relating to the rules concerning the admissibility of evidence, which differ from one legal system to another, as well as conflicts of jurisdiction that are likely to arise.

Indeed, because the joint investigation team derives from several criminal procedures, we measured the value of understanding and addressing the question of distributing jurisdiction as early as possible.

- f. To this end we identified several solutions, which would require either the pattern of protocol of agreement to be revised, or the role and powers of Eurojust to be strengthened, or even a combination of the two.

Criteria were also laid down to facilitate the regulation of the powers. Inspired *inter alia* by those drawn up by Eurojust, they also take account of the possibilities and advantages offered by each legal system to ensure that the procedure is as effective as possible.

- The conference finally provided an opportunity to make clear that Eurojust and Europol, in their respective areas of jurisdiction, certainly have a role to play in the development of the joint investigation teams. The tools that have already been adopted or are under discussion already make provision for them to be involved, in different forms.
- Thus, the Decision of 28 February 2002 allows Eurojust, acting through its college or its national members, to ask for a joint investigation team to be set up, and the draft Decision strengthening Eurojust, which is

currently under discussion, provides for a closer involvement of the national members in the operation of the team.

- Similarly, the Decision that set up Europol - that was recently the subject of a political agreement at the Justice and Home Affairs Council meeting of 18 April 2008 – allows Europol to ask for a joint investigation team to be set up and for its officers to take part in support.
- We strived to determine what type of support Eurojust and Europol might provide for the promotion, setting-up and operation of the joint investigation teams, while focusing on distinguishing between them according to the types of support provided by each organisation.
- In this respect, the work carried out at the workshop and the contributions of Mssrs Lopes da Mota and Simmanacas-Carrion show that these possibilities are little used at this time, while these organisations would be able to provide their support mainly in the following areas:

- a. Logistic and financial support

It was noted that Eurojust could provide resources for the signatory authorities, including financial resources, that would be useful in the setting-up and operation of joint investigation teams.

- b. Analytical support

Apart from criminal analyses that could be carried out by Europol, Eurojust is also in a position to carry out cross-checks with judicial proceedings underway or with cases already dealt

with by the organisation, using its Case Management System.

They show the need for Eurojust to be provided with complete information, both up and downstream. Eurojust might facilitate the setting-up of joint investigation teams and assess the *modus operandi* of this type of cooperation by identifying best practices and improvements that might be made.

- Finally, the discussions illustrated the need to better involve the Member States in the setting-up of the joint investigation teams, by highlighting the expected results: apart from the possibilities for budgetary financing, **the sharing of assets confiscated as a result of the investigations, and the inclusion of their effectiveness in the assessment of performance, were also mentioned as potential benefits.**

- **Conclusion**

- At the end of the work and discussions, it is possible to say that our essentially pragmatic objectives were met. I hope that today's conclusions will make it possible to develop this type of cooperation, which is certainly one of the most innovative, and that in time it will be one the most effective. I also hope that it will be adapted for use in the multilateral context in which it may soon be applied.
- It would indeed be desirable for the scope of the joint investigation teams to be extended, whether through “multilateralization” or by the teams being used in fields other than those favoured at the present time i.e. drug trafficking and terrorism.
- These changes will require the assistance of Eurojust and Europol, in their respective fields, whose operational capacities must be fully used, as

recommended at the time of The Hague Programme in 2004. They will have a part to play in helping to promote the joint investigation teams by getting involved when teams go into operation and providing them with support.