

**Decision**  
by the Bundesrat

**Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)**

**COM(2013) 535 final; Council document 12566/13**

At its 915th session on 11 October 2013, under the terms of Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG), the Bundesrat adopted the following opinion:

1. The Bundesrat welcomes the aim of the proposed Regulation to further improve Eurojust's capacity to effectively tackle cross-border crime. We basically support the proposal's endeavours to achieve this aim by changing the existing organisational structure and putting in place new rules for effective cooperation with the future European Public Prosecutor. However, it would have been preferable to first wait until Member States have acquired sufficient practical experience with the 2008 Eurojust Decision. The Bundesrat supports all measures which effectively consolidate judicial cooperation between national prosecuting authorities in combating cross-border crime. In this regard, account should be taken of the fact that Member States' experience of working together with Eurojust has been positive. This experience has confirmed that the activities of Eurojust (centralised structure) and the European Judicial Network (EJN) (decentralised structure) effectively complement each other.
2. The Bundesrat can understand that a harmonised framing of national members' operational powers is needed in order for Eurojust to operate effectively. However, the Bundesrat would point out that removal of the exemption for federal or constitutional provisions, which has applied hitherto, restricts the flexibility which Member States currently still have. According to German legislation on Eurojust, the German Eurojust member is currently not authorised to undertake investigative measures independently or to decide on requests for mutual legal assistance. In this

connection, the Bundesrat is concerned by the provision on the competence of national members for authorising requests for legal assistance and arranging investigative measures, which, in an urgent case, might even be possible without the agreement of the national authority responsible. In view of *Länder* competence for prosecution provided for under the German Basic Law, in the Bundesrat's view, there is also a risk here of a constitutional conflict.

3. The Bundesrat has reservations regarding the planned extension of notification and information obligations vis-à-vis Eurojust imposed on national authorities. An extension of this kind is only justified if, despite the extra effort involved in practice, it is actually necessary for effective control of cross-border crime. This has not to date been demonstrated.
4. The Bundesrat acknowledges the efforts to bring about a clearer separation of Eurojust's operational activities on the one hand and its administrative tasks on the other. Freeing up the board and operationally active members by setting up an executive committee seems, in the view of the Bundesrat, an appropriate way to enhance Eurojust's efficiency. The Bundesrat would welcome a streamlined decision-making procedure for non-operational matters. The Commission's aim of enabling Eurojust to realise its full potential for combating serious cross-border crime will, in the Bundesrat's opinion, be supported by the structural reorganisation. The Bundesrat has concerns as to whether the planned closer administrative involvement of the Commission, specifically the right to nominate candidates for the post of Administrative Director, and its representation on the executive committee, is compatible with the nature of Eurojust as a judicial body.  
  
The Bundesrat welcomes the close links envisaged by the Commission between Eurojust and the future European Public Prosecutor. However, it would point out that, owing to the probable non-participation of some Member States in the European Public Prosecutor's Office, regulatory gaps may arise which would have to be covered by the Eurojust Regulation.
5. The Bundesrat has concerns regarding what is arguably exclusive coordination of handling of requests from third countries if these requests arise during the same investigation and have to be handled in at least two Member States. It also has reservations in that the transmission of knowledge and information originating from national prosecuting authorities to third countries no longer has to be approved by the national member of the Member State as used to be the case under the 2008 Eurojust Decision.
6. The Bundesrat is transmitting this opinion directly to the Commission.