ACT Nº 36/2003, of 22 August 2003: national legislation implementing the Eurojust Decision

Article 1

This statute lays down rules for implementing the Decision of the Council of the European Union 2002/187/JAI of 28 February 2002, setting up Eurojust with a view to reinforcing the fight against serious crime (hereinafter referred to as the Eurojust Decision), regulates the status of the national member of Eurojust, and defines his powers within national territory and his right to act in relation to foreign judicial authorities.

Article 2

1. The Portuguese representation to Eurojust shall be ensured by the national member.
2. The national member of Eurojust shall exercise the duties and powers laid down by the Eurojust Decision and by this statute.
3. The national member shall be assisted by a deputy and by one or more assistants, in accordance with the needs of the work.
4. When absent or unable to attend, the national member shall be replaced by his deputy or, in the latter's absence, by the assistant appointed thereby.

Article 3

1. The office of national member of Eurojust shall be performed on secondment by a deputy prosecutor general appointed by the Ministers of Justice and Foreign Affairs.
2. The national member of Eurojust shall be appointed on the proposal of the Procurador-Geral da República [Attorney-General], having heard the Superior Council of the Public Prosecution Service [Managing Board of the Public Prosecution Service].
3. The deputy and assistants of the national member shall be appointed, on secondment, from magistrates of the Public Prosecution Service and graduates in law respectively, subject to the agreement or on the proposal of the national member, with special preference for the former. The provisions in the preceding paragraphs shall apply correspondingly to such appointments.
4. Article 139(3) of the Statute of the Public Prosecution Service shall apply to the national member and his deputy.
5. The terms of the representation to Eurojust shall be defined in a special statute, having regard to the nature of Eurojust and the agreement concerning its headquarters, entered into by the latter and the host Member State.
6. The deputy of the national member shall have his place of work in national territory or in the headquarters of Eurojust, according to the needs of the work. In the latter case the preceding paragraph shall apply.
7. The Statute of the Public Prosecution Service shall apply on a subsidiary basis in relation to incompatibilities, duties and rights.

Article 4

1. The national member of Eurojust shall report directly to the [Portuguese] Attorney-General [Prosecutor General] in relation to the exercise of the powers in national territory provided for in Article 8 hereof.
2. In the exercise of his tasks the national member of Eurojust shall be governed by criteria of legality and objectivity. In addition to the provisions of criminal law and criminal proceedings, he shall comply with the Statute of the Public Prosecution Service and the prevailing legal rules and rules made by virtue of agreements relating to international judicial cooperation in criminal matters.
3. The technical and administrative support services of the Attorney-General's Office shall provide the national member of Eurojust with the support necessary for exercising his duties and powers in national territory.

**Article 5**

1. The requests referred to in Article 6 (a) of the Eurojust Decision shall be forwarded:

   a) to the Central Department for Criminal Investigation and Prosecution and the Departments for Criminal Investigation and Prosecution in the seats of the legal districts in relation to crimes falling within their jurisdiction;

   b) to the District Attorney-General's Offices in other cases.

2. The bodies and services referred to in the preceding paragraph shall inform the national member of their decision.

3. The letters rogatory and other requests for judicial assistance referred to in Article 6 (g) of the Eurojust Decision shall be forwarded directly through the national member of Eurojust.

4. Information referred to in article 6 (b) of the Eurojust Decision, shall be transmitted to the bodies and services referred to in (1) or the competent Public Prosecution Service.

**Article 6**

1. The requests referred to in Article 7 (a) of the Eurojust Decision shall be forwarded to the Attorney-General.

2. The Attorney-General shall be responsible for taking a decision on the requests.

3. The Attorney-General may delegate the competence referred to in the preceding paragraph to the director of the Central Department for Criminal Investigation and Prosecution.

4. The decisions, particularly those referred to in Article 8 of the Eurojust Decision, shall be forwarded to Eurojust via the national member.

**Article 7**

The requests referred to in Articles 6 (a) and 7 (a) of the Eurojust Decision shall be examined and decided upon in compliance with the law on criminal procedure, the prevailing rules made by virtue of agreements and the Eurojust Decision, with a view to achieving the aims of the investigation and having regard to the transnational nature of the criminal activities and the investigations, and the need for judicial cooperation and coordination between the national and foreign authorities necessitated by the case.

**Article 8**

1. Pursuant to Article 9 (3) of the Eurojust Decision concerning crimes falling within Eurojust's competence, the national member may exercise in national territory the judicial powers referred in the following paragraphs.

2. In cases of urgency or where a delay in the acquisition and storing of evidence may present a danger, the national member of Eurojust may:

   a) inform the criminal investigation bodies to adopt the interim measures of protection and police measures necessitated by the case, where it acts in accordance with the provisions in Article 6(a)(i) of the Eurojust Decision;
b) issue additional requests for judicial assistance for undertaking specific acts which are tacitly or
generically included in the initial request in the cases referred to in Article 6 (g) of the Eurojust
Decision, or in the context of participation in joint investigation teams, pursuant to Article 13 (12)
of the Convention drawn up by the Council in compliance with Article 34 of the Treaty on European
Union, on Mutual Assistance in Criminal Matters between the Member States of the European
Union, 29 May 2000, when the competent Public Prosecution Service is unable to act in good time.

3. The national member shall notify the bodies referred to in Article 5 (1) of this statute or the
competent Public Prosecution Service, as applicable, immediately or as soon as possible, of the
acts undertaken in compliance with the preceding paragraph.
4. The national member of Eurojust may also:

a) inform the competent Public Prosecution Service on useful judicial cooperation measures with a
view to improving the coordination of investigations and prosecutions and cooperation between
the competent authorities;

b) ask the Public Prosecution Service, the competent criminal investigation bodies and
administrative authorities for the information necessary for it to exercise the duties referred to in
article 6 (b) of the Eurojust Decision, particularly those relating to criminal acts and their
perpetrators, the transnational dimension of the criminal activities and the investigations, the
progress of the investigations and proceedings, and requests for international judicial cooperation;

c) issue, at the request of the competent Public Prosecution Service, additional requests for
judicial assistance other than in the context of urgency in the conditions and cases referred to in
paragraph 2 (b) hereof;

d) provide support in defining the forms and methods of concerted action with the authorities of
other Member States and in the preparation, monitoring and implementation of requests for
judicial cooperation;

e) receive and take measures to comply with requests for judicial cooperation from the authorities
of other Member States in relation to information on national legislation and judicial organisation;

f) access the criminal records or any other register in the same conditions as the other
magistrates of the Public Prosecution Service, as far as is necessary for them to exercise their
tasks;

g) exercise the other tasks assigned to by law or by agreement.

5. The Public Prosecution Service competent to conduct the investigation shall inform the national
member of cases relating to crimes falling within Eurojust's competence when the investigations
involve two or more European Union Member States. The national member shall keep the Public
Prosecution Service informed of the activity carried out thereby.

6. The national member of Eurojust shall be subject to the rules of criminal procedure relating to
legal confidentiality.

**Article 9**

1. The national member of Eurojust may take part in joint investigation teams, in accordance with
Article 13(12) of the Convention drawn up by the Council pursuant to Article 34 of the Treaty on
European Union, on Mutual Assistance in Criminal Matters between the Member States of the
European Union, 29 May 2000, with a duty to provide assistance and support.

2. By means of an express agreement relating to the establishment of the joint investigation
team, the national member may ask for the investigations referred to in Article 13(7) of the
aforesaid Convention to be conducted.

**Article 10**

1. In accordance with Article 9(3) of the Eurojust Decision, the national member of Eurojust may
act in relation to the foreign authorities:
a) for the purposes of forwarding requests for judicial assistance in the cases referred to in Article 6(g) of the Eurojust Decision;
b) for the purposes of issuing and forwarding additional requests for judicial assistance in accordance with Article 8(4)(b);
c) for the purposes of issuing and forwarding additional requests for judicial assistance in accordance with Article 8(4)(c);
d) for the purposes of receiving and complying with requests for judicial assistance in accordance with Article 8(4)(e).

2. In case of emergency, requests for mutual legal assistance referred to types of crimes falling into the competence of Eurojust may be issued by national member in accordance with article 9(3) of the Eurojust Decision and article 6(4) of the Convention drawn up by the Council pursuant to Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union, 29 May 2000.

Article 11

1. In accordance with Article 26 (4) of the Eurojust Decision, the national member of Eurojust shall be regarded as a national competent authority for the purposes of Regulations (EC) No 1073/1999 and (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF).

2. The Public Prosecution Service competent to conduct the investigations shall inform the national member of the cases notified to it by OLAF relating to crimes and investigations which involve two or more Member States of the European Union.

3. The national member of Eurojust shall be responsible for ensuring that the competent Public Prosecution Service does not oppose cooperation between Eurojust and OLAF for the purposes of Article 26 (3) of the Eurojust Decision.

Article 12

1. In accordance with Article 12 of the Eurojust Decision, the following may be appointed national correspondents of Eurojust:

a) the Attorney-General's Office;
b) the District Attorney-General's Offices;
c) the Central Department for Criminal Investigation and Prosecution;
d) the Departments for Criminal Investigation and Prosecution in the seats of the legal districts;
e) the Criminal Police and other criminal investigation bodies.

2. The functions of national correspondent shall be carried out by whoever is appointed for that purpose.

3. The director of the Central Department for Criminal Investigation and Prosecution shall be the national correspondent for terrorism matters.

4. Without prejudice to the direct contact between the national member and the competent judicial authorities or the bodies of the police, in accordance with Article 9(5) of the Eurojust Decision and Articles 5 and 6 of this statute, the national correspondents shall be privileged contact points of the national member.

Article 13

1. The national member of Eurojust shall prepare an annual activity report to be submitted to the Ministry of Justice and the Attorney-General.

2. The national member of Eurojust shall inform the Ministry of Justice and the Attorney-General
of the functioning of judicial cooperation falling within Eurojust's competence and shall propose the measures shown to be necessary for its improvement.

**Article 14**

1. The National Committee for the Protection of Personal Data shall be responsible for appointing the national member of the Joint Supervisory Body from among its members, in compliance with Article 23 of the Eurojust Decision, and for ensuring its representation on that body.
2. The national member of the Joint Supervisory Body shall be responsible for selecting the personal data transmitted thereto, with a view to its processing, and for controlling that it is properly included in the Eurojust data processing system.
3. The status of the National Member of the Joint Supervisory Body shall be ruled in a special statute.

**Article 15**

The provisions of this statute, amended where necessary, shall apply in cases involving non-Member States of the European Union, in accordance with Article 27 of the Eurojust Decision.