

EuroNEEDs

Evaluating the need for and the needs of a European Criminal Justice System

By

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The views expressed in this report are those of the author, or those she cites, and in no way represent an institutional position

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EuroNEEDs: Empirical Report

Part I Study Concept and Methodology

A. Study Concept

European criminal law is the focus of much – especially political and academic – discussion with the potential reform of European agencies (Europol and Eurojust), ECJ decisions (esp. C-173/06) and trans-national crime sparking controversy and discussion on the topic. Given that structural reform of the European Union as a criminal justice actor was at the heart of the political agenda it seemed high time that a project be conducted to evaluate the added value of European criminal law and its institutions or, perhaps better put, a European criminal justice system.

Above all a need was perceived to chart what the mechanisms and institutions of European criminal law are being used for in practice, which gains have been achieved via their introduction for practitioners and which further needs (if any) are felt by professionals working in the emerging European criminal justice system (consisting of both national institutions dealing with such cases and in the relevant institutions developed at the European level – OLAF, Europol, Eurojust and the European Judicial Network – hereinafter EJM).

The project aim was to counter the lack of knowledge in this field by evaluating what demands are placed on the developing European criminal justice system and to identify any practical problems arising during and from its use. A further aim was to examine how professionals working within it evaluate certain mechanisms or institutions: real and potential. It strived to gain truly European results, and was thus carried out as a comparative study; posing its question in different national and supra-national contexts.

The study was visualised on the basis of the Hague programme, viewing the European Union as a single area of freedom, liberty and justice; developments within European criminal law as serving the purpose of providing for this. The core hypothesis of the study is that a European area of freedom, security and justice centrally has two requirements:

- i. that the interests of that Union are adequately protected throughout the Union and that

- ii. the national borders within the Union pose no impediment to the successful prosecution (in its broadest sense¹) of crime.

Requirement i. acknowledges that the area of freedom, security and justice of the European Union must consider and protect the assets and institutions of the European Communities and ensure that offences against the Community's interests must be equally and adequately protected throughout the Union. This study set out to establish in how far this is the case relating above all to its financial interests. Given the intensity with which debate surrounds this subject, especially now that the Lisbon Treaty has entered into force it was necessary that the study focused also upon an evaluation of reform and improvement proposals relating to this area, in particular the potential for a European public prosecutor.

Requirement ii. addresses an area which has become of central political importance since the Tampere Council and aims to evaluate how well the mechanisms introduced so far are contributing to ensuring borders pose no significant problems to criminal justice. The study also considered reform proposals and further mechanisms to improve the functioning of trans-national prosecution.

EuroNEEDs thus identifies two areas of criminality as of legitimate "European" criminal justice interest namely crimes against the financial interests of the EU and cross-border crime. In this analysis these are referred to as European crimes; intended to indicate their scale and nature as meaning that they should be viewed of as equal concern to any European citizen and tax payer and are likely to be combatted successfully only if a criminal justice perspective beyond the traditional nationally bound is assumed.

It must be expressly noted that this study views the work of defence lawyers as central to criminal justice; thus the study also investigated in how far the same borders of the Union may impede this.

The fundamental question as to the necessity of mechanisms and institutions to be introduced at supra-national level is addressed also for this context.

Fundamentally the study evaluates in how far these types of crime are being successfully (including comprehensively) investigated and prosecuted in order to achieve criminal justice. The current structures necessitate that such investigation and prosecution be carried out by member state authorities potentially utilising

¹ Prosecution is meant and the word prosecutor used in a Continental sense meaning that all steps towards lodging a criminal charge are meant. In other words investigators are also considered to be prosecutors and their work part of the broader prosecution process.

mechanisms and institutions placed at their disposal (above all) by the EU. The study thus pursued its aim to identify successful mechanisms and short-comings in prosecuting offences against the interests of the European Union and trans-national crimes as well as to identify any practical problems arising within European criminal justice. The focus is thus more narrowly on justice-related issues; in which investigations naturally play an important role but they did not form the research focus. The study also examined in how far and in what way national authorities go about handling such cases and interacting with supra-national institutions. Furthermore problems related to such cases were identified and potential solutions to these explored. This was achieved via an examination of how professionals working within European criminal justice (as defined by the study) evaluate certain mechanisms and institutions available to them and what could be done to improve the system. Looking, as it did, at these issues as a European matter, EuroNEEDs had to ensure the results gained are truly European. It was therefore carried out as a comparative study; posing its question in different national and supra-national contexts.

B. Methodology

The study was carried out by a partner network consisting of 20 partners from 18 countries (17 EU member states and Croatia). The study was designed to cover countries representative of the legal orders of the EU as well as variety in size and geographical diversity. Partners were selected based upon their experience in comparative law research as well as their knowledge of European criminal law.

In their capacity as experts for their country, they were asked to identify interview partners with an overview of investigations and prosecutions of European offences. Above all, prosecutors were interviewed on the one hand, though some investigators and investigating magistrates were also included, and defence lawyers on the other.

Due to the project timescale, partners were asked to interview no less than five prosecutors or equivalent dealing with offences against the EU's financial interests, five dealing with trans-national crime (where organizational specialisation occurred in the following order of preference: human trafficking cases, drug smuggling, corruption) as well as five defence lawyers with specialisation in these areas. Interviewees were to be identified according to their expertise and experience in order to enable the project to determine what is working well and what not in these kinds of European cases. Naturally this means selection of interview partners could not

be random and so one important question relating to these cases was factually blended out (at this level of) of the study: namely the experiences and abilities of non-expert prosecutors and investigators to deal with these kinds of cases. Assuming that such individuals are only faced with cases of this kind very rarely in the course of their careers, a legitimate worry would be that they are least able to deal with them, least versed in knowledge as to who to turn to and thus perhaps least likely to deal with them comprehensively and successfully. The sample of interviewees required to capture this potential field was unfortunately prohibitive to the study which is thus restricted to capturing the experiences and impressions of experts: national and in supra-national institutions, of this group. This inevitably means that a potentially important group: prosecutors and investigators with no experience in these fields who do not seek expert support, are not captured by the study. This must be borne in mind when viewing its results.

The restriction of potential interviewees meant that in smaller, strongly centralised countries, partners were not always able to identify five interview partners in each category – in particular in relation to financial interest offences. Thus many project countries have only a smaller number of interview results whilst the larger member states such as Germany and the U.K. feature a greater number of interviews (representing relatively restricted samples, however, because they also have a larger potential pool considering the same degree of centralisation is not practicable). Furthermore the planned methodology was restricted by potential interviewee willingness to co-operate: in Greece very few prosecutors were willing to participate (interestingly counter-balanced by great defence participation) whilst in a number of member states, no or very few defence lawyer interviews could be realised (Sweden, Slovak Republic, Finland and Belgium). To secure participation, the Luxemburg partners held round-table discussions rather than interviews; the respective group of prosecutors is asked so often to participate in studies there, that no other approach was viable – where relevant results are available, these are therefore documented separately in this report. Data for Belgium is restricted to financial interest expert prosecutors.

The interviews were conducted by the project partners in the respective native tongue of their interview partners based upon a semi-structured interview questionnaire. Prior to seeking interview partners, the project partners participated in a meeting in which the study concept and focus was explained and the desired approach to and aims of interviews communicated and discussed. The questionnaire and each individual question was subject to explanation and discussion to ensure unitary data collection.

Interviews of supra-national practitioners were conducted and documented exclusively by the project head.

Selection of Interviewees

The choice of interview partners was left to the country partners who were in the best position to judge, for their country, which interviewees would be best placed to give them an insight into or an overview of the relevant situations. These interviews forge the background and central focus of the study.

One major strand of this study had, however, to be to place this (national) evaluation in context. EuroNEEDs is built upon a hypothesis that there are criminal justice matters which require a more trans-national or “European” approach; innate in which there is an understanding that the national perspective may be limited in its ability to recognise and deal with these. Thus interviews of national practitioners are presented alongside those with staff of supra-nationalised criminal justice institutions. Naturally interviewees were invited to comment upon this study assumption. The interview partners within OLAF, Europol and Eurojust were selected by these institutions themselves in accordance with the wishes expressed by the EuroNEEDs project leader in as far as these could be accommodated. Where a selection of nationalities was available, those corresponding to the project countries involved were requested but selection also had to occur in accordance with factual competence.

Interviews at one supra-national office were granted on the condition of strict anonymity and to ensure this, great detail of the supra-national sample are not made available. Of those countries represented in the study otherwise, Croatia and Greece were not represented in the supra-national sample whilst France, Ireland and Portugal were despite not featuring in other study areas. In comparison to the proportions of the national prosecutor interviewees, Belgium was strongly and Germany relatively strongly overrepresented whilst the UK was strongly underrepresented amongst the supra-national sample. Hungary is strongly, Austria and Luxemburg² somewhat, Finland slightly and the Czech Republic and Denmark just overrepresented comparatively whilst Italy and Sweden fairly strongly, the Slovak Republic somewhat, Spain are slightly and the Netherlands and Estonia underrepresented if the samples are compared. It should be noted that supra-national practitioners were interviewed as such, not as formal representatives of their institution nor as of their national backgrounds. With only four (13%) excep-

² though here a relatively low number of national interviews must be noted

tions these supra-national interviewees were, however, previously practitioners (investigators or prosecutors) in their member states, marked by this experience and indeed they also recounted from it. This must be borne in mind when their interview results are analysed. One should, however, not forget that there is no such thing as an “EU practitioner” at this point.

Post interview the project partners entered the information gathered into an evaluation form designed for this purpose using online survey software. Where standard answers were expected these were pre-formulated but there was always room for comment and elaboration. In this way the project sought to achieve a certain level of interpretation of the interviewee answers by a person sensitive to the context in which they were given as well as to ensure the project data was available in languages spoken by the project leader. Wherever interviewees consented to it, interviews were recorded and are held as audio files at the Max Planck Institute. Where audio-recording was declined or stated by the interviewee as changing how openly he or she would be willing to answer questions, extensive written interview protocols were made immediately post-interview.

In addition to the online submission of their interview results, many partners requested a means by which to present their results in the context in which they understood them. To this end, a standardised country experience report structure was drawn up and the majority of project partners have provided a report of this kind. These reports are submitted as an annex to this report and should be considered where a more nuanced understanding of component results is desired.

Methodological problems: Because great importance was attached to issues surrounding the successful prosecution of offences affecting the EU’s financial interest, a particular emphasis was placed upon these by the study methodology and partners were asked specifically to attempt to seek out experts with experience in this field and speaking only of cases related to them. Unfortunately, from the study point of view, prosecutors who deal with European cases often have experience in both fields identified by the project. This interviewees identified and asked for interviews as experts for EU financial interest related offences, answered more broadly based upon their experiences as a whole. The analysis which follows provides an overall analysis, as well as one broken down into experts speaking of proceedings related to offences against the EU’s financial interest as well as the second category of trans-national crime. Had the study been executed as planned, these categories should each represent approximately half the sample. As will be-

come clear, amongst the national prosecutors (in the broadest sense possible) this is by no means the case – in part because the group of potential interviewees for EU financial interest related offences was considerably smaller (if only we knew the comparative scale of the respective crime phenomena – potentially an interesting result in its own right) and because only those interviews were included in the financial interests analysis of which the partners and project leading team were convinced that they related centrally to financial interest related offences. The same selectivity was applied to trans-national offence experts but in this context the problem did not arise to the same extent.

Ultimately too, the choice of interview partners had to be left to the country partners who were in the best position to judge, for their country, which interviewees would be best placed to give them an insight into or an overview of the relevant situations. Whilst ideally they were asked to interview practitioners with very recent experience of actually handling such cases, reality was often that a sufficient number of such interviewees was not available and indeed that partners judged more senior practitioners – who no longer deal with cases on a day to day basis, as better able to answer some of the required questions. In some cases such persons were questioned in addition to the practitioners on the ground requirement. In the analysis that follows, there are thus a number of questions which include a group of interviewees failing to respond - marked “no answer.” In particular in relation to questions concerning day to day practice. These respondents include such interviewees.

As stated above, the study aimed to capture practitioners’ anticipation of potential reforms. Top of the agenda is, of course, the question of a European public prosecutor. Though care was taken not to place ideas in interviewees’ heads, this study was not conducted in a political vacuum. Since the Treaty of Lisbon entered into force, Commissioner Reding has also ensured the topic has a high profile so that it cannot but be assumed that interviewees were sensitive to this topic. Project partners reported their interviewees as exclusively relating the question concerning a centralised prosecution body to the question of an EPP. In fact, the questionnaire was careful not to elaborate whether this centralisation was to be at the supra-national level but of the 47 interviews the author conducted, only in one of them did she experience that an interviewee discussed this centralisation in anything but the supra-national context. It can further, of course, not be excluded that interviewees expressed opinions not in fact their own or forged by other experiences than those we ideally wish to refer to here; their own or institution’s political position may well have been a strong influence upon the answers given. This is par for the

course in interview based studies but the intense nature of the controversy and indeed the core political issues surrounding the questions posed by this study must also be noted and borne in mind in interpreting its results.

Because a certain degree of political reaction was anticipated and the study aimed above all to gain practice-based insight, a number of issues were approached from a variety of angles by e.g. posing more or less specific questions in different questionnaire contexts. These are reflected upon in what follows and questions are thus in part evaluated in this report in an entirely different combination than that in which they were presented in the questionnaire.

C. The EuroNEEDs study results

In what follows the study results from the initial evaluation are presented. Firstly overall and then contrasting these with the analyses of answers from EU financial interest related experts only, followed similarly by trans-national crime experts. The overall results stem from 132 interviews with prosecutors (in the broadest sense meaning investigating judges and investigators are included though they are a small minority), 35 of whom are identified absolutely as financial interests experts, 64 as trans-national crime specialists. A further 30 interviews with representatives of supra-national criminal justice (related) institutions (OLAF, Europol and Eurojust) are included, 14 of whom are filtered out in a second step as experts for offences relating to the EU's financial interests. In this way the study presents the experiences, needs and opinions of investigating and prosecuting professionals across the EU.

Interview data stems from the following countries:

Austria

Belgium

Croatia

Czech Republic

Denmark

Estonia

Finland

Germany
Greece
Hungary
Italy
Luxemburg
Netherlands
Poland
Slovak Republic
Spain
Sweden
United Kingdom: England and Wales.

Due to the methodological reasons stated above, Luxemburg was unable to provide data in the standard format and so relevant comment is entered separately. As such the opinions from Luxemburg are given high profile presented in isolation as they are. In future analysis an attempt will be made to integrate these results into the broader empirical setting of the project. It must be borne in mind when reading the comments stemming from Luxemburg that in an empirical sense these are “only” three opinions (representing 2.2% of the sample if factored in). In the qualitative context they are opinions of practitioners with great experience and a country of central importance for enforcing in particular EU financial interest related criminal law. The reader should simply note that he or she might be left with a different impression if a similar summary of comments from all other study countries was presented alongside the ones from Luxemburg. The full Luxemburg report is submitted alongside this report.

These prosecution-centric results are augmented with defence lawyer opinions stemming from 60 interviews in 15 EU member states and Croatia:

Austria
Belgium
Croatia
Czech Republic

Denmark

Estonia

Finland

Germany

Greece

Hungary

Italy

Luxemburg

Netherlands

Poland

Spain

United Kingdom: England and Wales.

Again the Luxemburg data are not available in the standard format and thus not included in the statistical analysis but commented upon separately in the relevant section.

Part II Challenges Facing Practitioners in European Cases

A. Recognising and dealing with European offences comprehensively

The central assumption which has led to criminal justice related action at the EU level is that European cases present additional challenges to the criminal justice practitioners tasked with handling them. Their transnational nature, the involvement of multiple legal systems and the need to work inter-jurisdictionally are bound to mean quite different issues are faced than in more conventional, nationally bound cases. Protection of the financial interest of the European Union brings a further complication: a different legal system.

The evaluation of criminal justice system effectiveness in any crime area is fundamentally challenged by the dark number. How can one possibly go about judging how successful a system is in combatting a crime when one doesn't know how of-

ten the offence occurs? This classic criminological debate acquires a new dimension in relation to the crime phenomenon discussed here. Controversial attempts have been made to estimate the extent of organised and cross-border crime whilst efforts to estimate offences against the EU's financial interests have been fairly limited so far.

Countering this problem was well beyond the remit of this study which never the less needed to address this issue if its attempts to identify problems facing criminal justice practitioners in dealing with European crimes were to be meaningful. One study hypothesis was for example that national investigators and prosecutors may not be in a position to recognise the full extent of a case. This may naturally be the case more broadly, with investigative intelligence often being local, but many MSs have taken significant steps to counter this (Strafverfahrensregister in the multi-jurisdictional Germany, central police register in the UK) at the national level. It does not seem unreasonable to assume that the challenges will be greater where the distances become so much greater, accompanied as they are by a context of different languages and legal cultures.

In order to gain some sense of the overall capacity to deal successfully with European cases, the attempt was to assess the feeling of expert practitioners in the field as to how comprehensively these crimes are currently being countered. This is naturally a highly speculative means by which to do so but the results are presented as a vehicle of rough guidance.

1. The criminal phenomena

Interviewees tended to be very hesitant in answering questions concerning the success in combatting the relevant criminal phenomena pointing to the above mentioned lack of knowledge as to the extent of crime altogether. Statements by national prosecutors thus require deeper qualitative analysis than is available at this point. Practitioners at Eurojust, Europol and OLAF similarly were for the most part unwilling to speculate.

Of those who were prepared to answer the question, all (8 out of 30 – 6 of these 8 stemmed from those qualified as experts on such crimes) supra-national practitioners stated that only a minority of crimes against the financial interests of the EU are successfully investigated and prosecuted. Of the 23 asked (because this question was not posed to OLAF staff), 5 stated that a majority of trans-national crimes are successfully investigated and prosecuted whilst 2 claimed this was only a minority. The majority of interviewees felt unable to answer the question.

Supra-national interviewees overall

B1 Which Proportion of Crimes against the EU Budget do you estimate as being successfully investigated and prosecuted?		
Answer	Count	Percentage
a minority (1)	8	26.67%
the majority (2)	0	0.00%
don't know (3)	22	73.33%
No answer	0	0.00%

B1a (Not for OLAF:) Answer as relevant: Which proportion of trans-national crime (please specify precisely which area this relates to, esp. if not evident from your specialisation) do you estimate as being successfully investigated and prosecuted?		
Answer	Count	Percentage
a minority (1)	2	6.67%
the majority (2)	5	16.67%
don't know (3)	16	53.33%

B2 Is the number of such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (1)	18	60.00%
Decreasing (2)	0	0.00%
Remaining stable (3)	3	10.00%
Don't know (4)	9	30.00%
No answer	0	0.00%

Supra-national interviewees -financial interests.

B1 Which Proportion of Crimes against the EU Budget do you estimate as being successfully investigated and prosecuted?		
Answer	Count	Percentage
a minority (1)	6	42.86%
the majority (2)	0	0.00%
don't know (3)	8	57.14%
No answer	0	0.00%

B1a (Not for OLAF:) Answer as relevant: Which proportion of trans-national crime (please specify precisely which area this relates to, esp. if not evident from your specialisation) do you estimate as being successfully investigated and prosecuted?		
Answer	Count	Percentage
the majority (2)	1	7.14%
a minority (1)	1	7.14%
don't know (3)	5	35.71%
No answer	7	50.00%

B2 Is the number of such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (1)	7	50.00%
Decreasing (2)	0	0.00%
Remaining stable (3)	3	21.43%
Don't know (4)	4	28.57%
No answer	0	0.00%

It is interesting to note that interviewees were less hesitant in recording their feeling as to how these criminal phenomena are developing with 60% of supra national practitioners overall stating that they estimate such crimes as being on the increase, 10% that they are remaining stable (with the remaining 30% not feeling able to give an estimate). This 10% stemmed from financial interest experts (who were not questioned in relation to trans-national crimes) forming 21% of the opinions specifically to the crimes against the EU's financial interests. In this context 50% of interviewees were convinced this crime phenomenon is increasing with 29% feeling unable to provide an estimate.

At the national level overall 56% of prosecutors felt unable to provide an estimate as to the trend during the past years, whilst 26% said these crime phenomena have been increasing and 18% thought they had not. Related specifically to our two crime strands, amongst the national financial interest experts 37% believe these crimes to be on the increase, 29% say they are not with only 34% feeling unable to provide an estimate. Relating to trans-national crime, 81% of national experts declared themselves unable to judge whilst 11% stated such crimes to be on the increase and 8% that this is not the case.

National Prosecutors - overall

B 1(c) Has this increased in the past years?		
Answer	Count	Percentage
Yes (1)	34	25.76%
No (2)	24	18.18%
No answer	74	56.06%
Non completed	0	0.00%

National Prosecutors - financial interests.

B 1(c) Has this increased in the past years?		
Answer	Count	Percentage
Yes (1)	13	37.14%
No (2)	10	28.57%
No answer	12	34.29%

National Prosecutors - trans-national crime

B 1(c) Has this increased in the past years?		
Answer	Count	Percentage
Yes (1)	7	10.94%
No (2)	5	7.81%
No answer	52	81.25%

Although such conclusions are drawn on a speculative basis, this study would appear to indicate that practitioners face stable or increasing criminal phenomena (or at least discovery of them) at the European level.

Whilst no conclusion can be drawn relating to trans-national crime, these results indicate that practitioners do not feel offences against the EU's financial interests are being comprehensively dealt with. Almost half the supra-national interviewees believe only a minority is being dealt with whilst no one believes that the majority are being dealt with (although many stated themselves not to know).

The study may well thus be taken as a tentative indicator that further action is required in this field. Current mechanisms would appear to require improvement.

2. *Dealing with the European Dimension*

The next step in attempting to gauge in how far the national systems currently charged with doing so are able to deal comprehensively with European cases was simply to ask interviewees whether they felt hampered by the European dimension of cases when investigating them. Naturally this pre-supposes that investigators will always be aware of the European dimension of their cases (which may well not always be the case – see *infra* the supra-nationalised practitioners opinion on this) and a case being hampered does not mean it will ultimately not be successfully investigated and prosecuted. Nevertheless, if the very fact that a case has a European dimension, more than 10 years after the Tampere Council, is attested as being a problem in itself and indeed as hampering (not merely complicating) a case, this provides grounds to believe that national criminal justice practitioners (who tend to be over-loaded) may need further assistance in dealing with such cases or that changes to the way in which such cases are dealt with might well be justified.

National Prosecutors - overall

B 4 Are such investigations hampered by the European dimension i.e. do they fail because of it (substantive and or procedural legal or practical complexity - is the necessity to rely on evidence to be found in another MS a bar)?		
Answer	Count	Percentage
No (1)	60	45.45%
Yes - Legal problems (2)	32	24.24%
Yes - Procedural problems (3)	39	29.55%
Yes - Practicalities (4)	56	42.42%
Yes - Other (5)	16	12.12%

National Prosecutors - financial interests.

B 4 Are such investigations hampered by the European dimension i.e. do they fail because of it (substantive and or procedural legal or practical complexity - is the necessity to rely on evidence to be found in another MS a bar)?		
Answer	Count	Percentage
No (1)	14	40.00%
Yes - Legal problems (2)	12	34.29%
Yes - Procedural problems (3)	12	34.29%

Yes - Practicalities (4)	17	48.57%
Yes - Other (5)	1	2.86%

National Prosecutors - trans-national crime

B 4 Are such investigations hampered by the European dimension i.e. do they fail because of it (substantive and or procedural legal or practical complexity - is the necessity to rely on evidence to be found in another MS a bar)?		
Answer	Count	Percentage
No (1)	27	42.19%
Yes - Legal problems (2)	16	25.00%
Yes - Procedural problems (3)	22	34.38%
Yes - Practicalities (4)	26	40.63%
Yes - Other (5)	11	17.19%

The majority overall, and of the categories of specialised prosecutors interviewed, answered in the affirmative that the European dimension of such cases hampered them (of those answering no, many stated the word hamper as being too strong saying that this was a complication). Overall this is a majority of 55%, for financial interest specialists it is 60% and for trans-national crime specialists 58%. Many of these are mentioning several aspects of such cases as problematic. Above all it is the practicalities of such cases which make the European dimension a hampering factor though legal and procedural problems are apparently not to be underestimated. The above results interestingly show a higher reporting of legal problems relating to the countering of offences against the EU's financial interests – perhaps indicating that this requires particular attention.

The study thus clearly indicates that the European dimension of cases is in itself a hampering factor. Whilst certain complications are unlikely to be overcome entirely, a need for further action is indicated.

National interviewees on the prosecution side were then asked in how far the European dimension could in fact be a bar to a case being comprehensively dealt with because, even though they recognised this dimension, they felt unable to pursue it.

National Prosecutors - overall

B 5 Are there cases in which interviewee recognises that there is a European / trans-national dimension but in which interviewee is unable to pursue this dimension or in which interviewee limits his/her investigation to the part of national relevance and why?		
Answer	Count	Percentage
Yes (1)	64	48.48%
No (2)	68	51.52%

B 5(a) If 'yes,' how could this be overcome?

In responding to question 5a, a minority of interviewees made several suggestions (the majority choosing to remain silent). Above all closer co-operation was called for (by 21 interviewees); mostly between member states but also with the EU level, speed, accountability and indeed obligations to co-operate were expressly mentioned. The second most frequent demand was for greater support from the EU (8), whilst a further 7 saw improved funding as the way forward. To a lesser degree increased use of Joint Investigation Teams – hereinafter JITs (5), the creation of a European Public Prosecutor - hereinafter EPP (4), improved language skills (4), legal harmonisation (2) and increased speed (2) were expressly mentioned at this juncture whilst singular interviewees suggested further development of the EU legal framework and powers to act ex territoriam as possible modi of improvement.

National Prosecutors - financial interests.

B 5 Are there cases in which interviewee recognises that there is a European / trans-national dimension but in which interviewee is unable to pursue this dimension or in which interviewee limits his/her investigation to the part of national relevance and why?		
Answer	Count	Percentage
Yes (1)	19	54.29%
No (2)	16	45.71%
No answer	0	0.00%

**B 5(a) If 'yes,' how could this be overcome?
financial interest specialist interviewees**

Closer co-operation	13
Greater support from the EU	4

Improved funding	3
The creation of an EPP	3
Increased use of JITs	2
Speed	2
Improved language skills	1
Legal harmonisation	1

National Prosecutors - trans-national crime

B 5 Are there cases in which interviewee recognises that there is a European / trans-national dimension but in which interviewee is unable to pursue this dimension or in which interviewee limits his/her investigation to the part of national relevance and why?		
Answer	Count	Percentage
Yes (1)	33	51.56%
No (2)	31	48.44%

Overall, a very large minority of 48% stated that this was the case, in other words that the European dimension of cases, at least sometimes must be left aside and an investigation focused merely upon what has taken place upon national territory. In other words a number of European cases cannot be prosecuted as such. In such cases clearly the full dimensions of the crime may well not become known and cannot be prosecuted. Such an answer to this question is naturally often not a simple matter. Several of the systems included in the study feature prosecutors bound by the principle of legality and by an ex officio duty to investigate such crimes fully (fraud and the trans-national crimes considered - trafficking human beings, drug smuggling and corruption – are not likely of a nature justifying any exception being applicable to them). Thus one might even speculate that this figure is not unlikely to be under-representative. The evaluation of specialists answers display a small majority (52%) of trans-national cases as (at least sometimes) being restricted in their investigative scope whilst a slightly larger majority (of 54%) of financial interests specialists stated this to be the case.

The low rate of response with ideas as to how to improve the situation means little can be drawn from this finding except the conclusion that the situation requires improvement.

At present national prosecutors frequently report being unable to deal with aspects reaching beyond their jurisdictions in a number of cases. Thus if comprehensive prosecution is desired for European crimes, further steps must be undertaken to ensure cases can be fully pursued.

Rules for division of cases between systems are possible – though drawing these up would require consideration of differences between criminal justice systems (above all whether prosecutions are brought based upon the principle of legality or mandatory prosecution or alternatively upon the principle of opportunity of discretionary prosecution). Furthermore awareness of the difference a prosecution in segments may well make to the result of such case (above all in relation to sentencing) in comparison to a single, comprehensive prosecution is needed.

B. Asking for assistance

1. Current mechanisms to request assistance

To enable an evaluation of their work, prosecutors were asked how they go about requesting mutual legal assistance, etc. in their daily work. The vast majority of interviewees – just under 80% overall as well as for trans-national experts and 82% of financial interests experts - reported their institution as having standard mechanisms by which to contact an equivalent foreign institution to request assistance. It should be noted that these standard mechanisms (and what was perceived as such) varied considerably: the majority of interviewees who provided details referred to the use of specific EU institutions or the European judicial network or of their own personal contacts (so a standard procedure developed during years of practice). Others meant the transfer of such matters to a specialised Mutual Legal Assistance department or representative or, far more rarely, the adherence to procedures laid down in national legislation or relevant international regulation.

Overall 10% negated the adequacy of these measures (with 18% not providing an answer to this question). Interestingly specialised prosecutors were more critical: even though they reported the highest degree of procedural standardisation, 11% of financial interest experts stated that the current set-up is inadequate (with 17% not answering the question). Trans-national experts were less willing to comment upon the adequacy of such mechanisms (20%) but also feature a higher rate of negation at 14%. Naturally this means that a clear majority – 72, 72 and 66% respectively – view the current standard mechanisms as adequate. Considering that this project interviewed above all experts working daily in these fields and not

prosecutors faced only occasionally with such mechanisms, the rate of refusal to express these mechanisms to be adequate might nevertheless be considered somewhat concerning.

This impression may well be confirmed when one considers the rate at which interviewees may use these mechanisms. When asked whether they *always* use them, 54, 46 and 55% respectively answered yes. Naturally no standard mechanism is likely to always be appropriate - a number of answers indicated that it is also not always necessary to utilise them (thus 26 (19.7%) interviewees state expressly that there are cases so simple they can solve them without recourse to these mechanisms). The rate of non-use beyond this may, however, be indication of their inadequacy.

Above all, however, the most frequent response to the question as to whether such mechanisms ensure success; namely that this depends upon the individual effort of the investigator or prosecutor involved (48, 49 and 45% respectively), displays clearly that standard mechanisms alone are not adequate to tackle the challenges of gaining evidence and assistance from abroad. The extra efforts of the individual prosecutor remain key in a large proportion of cases.

This aspect is emphasised too in the report for Luxemburg which states the willingness of the requested authority as the current key factor to the effectiveness of judicial co-operation. Practical issues such as language capacities and the political background (as to whether authorities are encouraged to develop mutual legal assistance) are also noted. Direct contact between authorities is reported to reduce the importance of legal texts.³

National Prosecutors – overall

B 6 Currently, where evidence is required from another MS does interviewee's prosecution service have standard mechanisms to contact its equivalent in other MS directly?		
Answer	Count	Percentage
No (1)	29	21.97%
Yes (2)	103	78.03%

³ Braum, p. 11.

B 6(a) Are these mechanisms adequate?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	13	9.85%
Yes (2)	95	71.97%
No answer	24	18.18%

B 6(b) Are they always used?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	22	16.67%
Yes (2)	71	53.79%
No answer	39	29.55%

B 6(c) Do they ensure success?		
Answer	Count	Percentage
No (1)	3	2.27%
This depends on the effort made by the individual investigator / prosecutor (2)	64	48.48%
Yes (3)	35	26.52%
No answer	30	22.73%

National Prosecutors – financial interests

B 6 Currently, where evidence is required from another MS does interviewee's prosecution service have standard mechanisms to contact its equivalent in other MS directly?		
Answer	Count	Percentage
No (1)	6	17.14%
Yes (2)	29	82.86%

B 6(a) Are these mechanisms adequate?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	4	11.43%
Yes (2)	25	71.43%
No answer	6	17.14%

B 6(b) Are they always used?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	11	31.43%
Yes (2)	16	45.71%
No answer	8	22.86%

B 6(c) Do they ensure success?		
Answer	Count	Percentage
No (1)	0	0.00%
This depends on the effort made by the individual investigator / prosecutor (2)	17	48.57%
Yes (3)	8	22.86%
No answer	10	28.57%

National Prosecutors - trans-national crime

B 6 Currently, where evidence is required from another MS does interviewee's prosecution service have standard mechanisms to contact its equivalent in other MS directly?		
Answer	Count	Percentage
No (1)	13	20.31%
Yes (2)	51	79.69%
No answer	0	0.00%

B 6(a) Are these mechanisms adequate?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	9	14.06%
Yes (2)	42	65.63%
No answer	13	20.31%

B 6(b) Are they always used?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	5	7.81%

Yes (2)	35	54.69%
No answer	24	37.50%

B 6(c) Do they ensure success?		
Answer	Count	Percentage
No (1)	2	3.13%
This depends on the effort made by the individual investigator / prosecutor (2)	29	45.31%
Yes (3)	15	23.44%
No answer	18	28.13%

Centrally it would appear, that the motivation of practitioners is the key to the success of such cases (which depend upon their assistance). Thus it is vital that this be secured.

2. *The contours of direct assistance experience*

When it comes to their specific experiences in providing assistance, a majority of prosecutors overall (just over half when analysed according to specialisation), reported no problems in obtaining and transferring evidence abroad. 23, 14 and 34% respectively replied in the affirmative that they faced complications. The difference between the low rate of problems relating to financial crime and the relatively high rate in trans-national cases is intriguing.

This difference is also apparent in the interviewee responses to whether they have ever refused a request. The overall affirmative response rate is 36% with a large divergence between the two crime strands for which specialists were interviewed; 20% of financial interests experts have refused requests whilst this rate is 44% amongst trans-national crime specialist. It would thus certainly appear that the latter investigations witness practitioners facing greater problems (or perhaps a lesser degree of specialisation/expertise or indeed familiarity with their foreign counterparts). Only 41 of 72 interviewees provided evaluable answers but of these: the vast majority reported refusals as occurring for fundamental (constitutional) legal reasons or for more practical reasons (such as the conditions for a measure being subject to other preconditions in that member state). This accounted for 70.7% of refusals. In addition 17.1% stated requests were refused because these were too generally formulated or considered too petty.

The reasons given for refusing requests consisted for financial interests experts above all of legal reasons and sometimes because requests are too loosely formulated. A number of those negating this question point out that they have had to request additional information to avoid refusing a request (count: 4 of 15 – 43% - who provided an answer). For trans-national experts the vast majority of reasons given also related to legal bars though also in two cases (of 39 interviewees representing 61% of the sample - who provided the requested information as to their reasons) because of own national proceedings being underway, two for capacity or policy reasons and two interviewees stated the requested act became impossible for practical reasons.

The study indicates that provision of information appears broadly possible although greater problems are apparent relating to trans-national crime cases. This requires further attention to determine how this situation might be improved. Greater legal familiarity or indeed harmonisation, better formulated requests and agreement as to proportionate use of measures would appear immediately appropriate.

38% overall, 31 and 39% respectively have had requests made by them refused. Again, not all relevant interviewees provided explanations; here 42 (58.3%) did: Practical legal issues are the dominant problem here with fundamental ones, however, also playing a role. Badly drafted or requests deemed not to be proportionate are mentioned at the same rate by those who have experienced their requests being rejected as those who have experience rejecting. Financial interests experts state above all legal reasons as having caused this but also a few cases in which their requests lacked the necessary precision, and one interviewee cites that a request could not be performed in time. A number of these specialist interviewees (7) state that their requests are not refused but point out that they are not fulfilled at all or alternatively not fulfilled in a timely manner, meaning that the practical effect is the same. Trans-national expert interviewees similarly state formal, legal grounds as the reason in the majority of cases, 5 of these interviewees state that they do not receive formal refusals but experience the functional equivalent mentioned above (two indicate that the refusals they have experienced relate exclusively to non-EU member states). One financial interests expert and two trans-national experts report checking whether something will be possible before making a request at all.

National Prosecutors - overall

B 12 (b) Were there any complications obtaining and transferring this evidence? Please explain briefly:		
Answer	Count	Percentage
No (1)	78	59.09%
Yes (2)	31	23.48%
No answer	23	17.42%

B 13 Has interviewee ever refused a request?		
Answer	Count	Percentage
No (1)	77	58.33%
Yes (2)	47	35.61%
No requests received (3)	8	6.06%
No answer	0	0.00%

B 13 (a) For what reason / what is the most frequent reason for refusing a request?		
Answer	Count	Percentage
	72	54.55%
<i>of which:</i> fundamental legal reason	19	
<i>of which:</i> more practical legal differences	10	
<i>of which:</i> too general/petty	7	
<i>of which:</i> lack of resources/time	1	
<i>of which:</i> not within the EU	1	
<i>of which:</i> formal	3	
No answer	60	45.45%

B 14 Have interviewee's requests ever been refused?		
Answer	Count	Percentage
No (1)	78	59.09%
Yes (2)	50	37.88%
No requests made (3)	4	3.03%
No answer	0	0.00%

B 14 (a) For what reason/ what is the most frequent reason? Please explain		
Answer	Count	Percentage
	72	54.55%
<i>of which:</i> fundamental legal reason	9	

<i>of which: more practical legal differences</i>	19	
<i>of which: too general/petty</i>	7	
<i>of which: lack of resources/time</i>	4	
<i>of which: not within the EU</i>	3	
No answer	60	45.45%

National Prosecutors - financial interests

B 12 (b) Were there any complications obtaining and transferring this evidence? Please explain briefly:		
Answer	Count	Percentage
No (1)	19	54.29%
Yes (2)	5	14.29%
No answer	11	31.43%

B 13 Has interviewee ever refused a request?		
Answer	Count	Percentage
No (1)	26	74.29%
Yes (2)	7	20.00%
No requests received (3)	2	5.71%

B 13 (a) For what reason / what is the most frequent reason for refusing a request?		
Answer	Count	Percentage
Answer	15	42.86%
No answer	20	57.14%

B 14 Have interviewee's requests ever been refused?		
Answer	Count	Percentage
No (1)	23	65.71%
Yes (2)	11	31.43%
No requests made (3)	1	2.86%

B 14 (a) For what reason/ what is the most frequent reason? Please explain		
Answer	19	54.29%
No answer	16	45.71%

National Prosecutors - trans-national crime

B 12 (b) Were there any complications obtaining and transferring this evidence? Please explain briefly:		
Answer	Count	Percentage
No (1)	34	53.13%
Yes (2)	22	34.38%
No answer	8	12.50%

B 13 Has interviewee ever refused a request?			
Answer	Count	Percentage	
No (1)	34	53.13%	
Yes (2)	28	43.75%	
No requests received (3)	2	3.13%	
No answer	0	0.00%	

B 13 (a) For what reason / what is the most frequent reason for refusing a request?		
Answer	39	60.94%
No answer	25	39.06%

B 14 Have interviewee's requests ever been refused?			
Answer	Count	Percentage	
No (1)	37	57.81%	
Yes (2)	25	39.06%	
No requests made (3)	2	3.13%	
No answer	0	0.00%	

B 14 (a) For what reason/ what is the most frequent reason? Please explain		
Answer	34	53.13%
No answer	30	46.88%

Relating to the requesting and transferring of evidence, the study is indicative of the kind of problems currently being discussed at the European level in association with the proposal for a European Evidence Warrant (EEW). The nitty-gritty of transferring evidence within the EU is – albeit exceptionally – still marked by significant problems with the law surrounding offences against the EU’s financial interests appearing particularly problematic.

60% of interviewees state they have no problem requesting or receiving evidence. Expert interviewees have lower rates of refusing requests but financial interest experts demonstrate a significantly higher rate of their requests being refused (though in absolute terms those reporting complications or refusing a request is a far lower proportion of these groups than EU’s financial interests experts are of the sample as a whole).

These reports occur despite many interviewees’ assertions that they try to check in advance whether their request is achievable. Such refusals are, however, an exceptional phenomenon and thus the work currently on progress on the EEW only represents a potential solution to a part of problems faced by practitioners at the moment.

The study results presented so far display the European dimension as housing multi-faceted challenges in all cases, asserted to be hampering in a large proportion of these. As we shall see, there is a proportion of such cases which expert practitioners in national criminal justice systems feel able to handle but there are a number of aspects which frustrate their efforts.

Efforts to agree upon the legal framework within which these practitioners operate (such as that currently underway relating to bank secrecy) would certainly appear to bear potential. As matters currently stand, however, this study certainly appears to deliver a basis upon which to assert that the current criminal justice set up is not in a position (nor set to be in one) to deal with the majority of crimes against the EU’s financial interests. Practitioners dealing with cases of the transnational crimes examined also face hampering challenges due to the European nature of their work for which solutions are yet to be found.

a) Feed-back

Because a significant cause of complaint is that cases land “at the bottom of the pile” and are not treated with priority⁴ leading to some of the problems highlighted above, it is of interest to understand in how far prosecutors take an interest in cases for which they have provided assistance. One possible marker of this would be knowledge as to what happened in the cases they become involved with. Thus a question was posed to measure the level of exchange between authorities after assistance has been provided.

Overall 27% knew the results of the cases they became involved with whilst 44% stated explicitly that they did not know what had happened. Financial interests specialists were slightly less well informed – 23% knew what had happened to the case but a similar 43% expressly said they did not know what happened in these cases. Given that financial interests specialist interviewees often pointed out the very long duration of such investigations, it is perhaps plausible that a higher proportion of cases had not been brought to a conclusion than in other categories, leaving the interviewees unable to answer this question. The trans-national specialist interviewees feature the lowest rate of refusal to answer the question, a slightly above average (47%) rate of “don’t knows” and the highest rate (28%) of definitive knowledge as to what case result was achieved.

The Luxemburg report states the normal situation to be that assistance is provided without the need for feed-back to be given.⁵ It should be emphasised that some study interviewees emphasised that they do not necessarily require feed-back, and that this should not necessarily be taken as evidence that they are not dedicated in their assistance of their colleagues abroad overall.

Interestingly, where interviewees knew of case results, the vast majority of these cases had been brought to a successful conclusion indicating, as would appear logical (considering that their interest is obviously raised for these cases), that they had also ensured the assistance provided was of sufficient quality. The relatively high proportion of cases in which interviewees stated having no knowledge of what happens to cases for which they provide assistance (steadily just under 50%) is consistent with the complaint that colleagues abroad may neglect their requests because they simply do not engage with them as cases. This aspect should not be overstated – the “don’t know” category includes interviewees who care enough to

⁴ Thus e.g. 14 (10.6% of the sample) explain that they are forced to reduce the scope of their cases because of a lack of co-operation from foreign colleagues. Two further interviewees stating that co-operation often comes so late, this has the same effect.

⁵ Braum, p. 12

ask but do not receive the requested feed-back but it is a nexus which should perhaps not be ignored entirely. Only one interviewee indicated that there was no need to know the results of cases he interacts with, viewing himself more as a service provider for his foreign colleagues in such cases. Several others indicated explicitly, however, that they view such feed-back as motivational. In other words, prosecutors might well be expected to work better together, if they identified their work more closely with a case as a whole.

National Prosecutors - overall

B 12 (c) Was the case brought to a successful conclusion?		
Answer	Count	Percentage
No - not brought to a successful conclusion (1)	8	6.06%
Yes - brought to a successful conclusion (2)	28	21.21%
don't know (3)	58	43.94%
No answer	38	28.79%

National Prosecutors - financial interests

B 12 (c) Was the case brought to a successful conclusion?		
Answer	Count	Percentage
No - not brought to a successful conclusion (1)	2	5.71%
Yes - brought to a successful conclusion (2)	6	17.14%
don't know (3)	15	42.86%
No answer	12	34.29%

National Prosecutors - trans-national.

B 12 (c) Was the case brought to a successful conclusion?		
Answer	Count	Percentage
No - not brought to a successful conclusion (1)	2	3.13%

Yes - brought to a successful conclusion (2)	16	25.00%
don't know (3)	30	46.88%
No answer	16	25.00%

b) Personal involvement in acts of mutual legal assistance

The level of satisfaction with current provisions to gain evidence was measured in the study not only by the general question as to satisfaction of interviewees with the mechanisms available to them. The lack of priority or urgency assigned to their requests is one hypothetical reason why prosecutors might prefer to be involved directly in gathering evidence abroad though investigative tactics and the ability to react as a case develops are explicitly mentioned most frequently.

Overall a clear majority of interviewees (66%) stated that they would prefer to become directly involved in evidence gathering abroad. 50 interviewees (37.9%) say they would always like to be involved whilst 63 (47.7) only express this desire in relation to large and complex cases. Amongst financial interests specialists this rate extended to greater majority with 80% (93% of those providing an answer) expressing this preference. In this category interviewees strongly expressed a need to accompany key stages of the investigation themselves in order to make quick reactive decisions as to how to proceed. Only 6% negated a desire to be involved displaying clear divergence from trans-national specialist interviewees. In this category 28% saw no need to be directly involved in evidence collection abroad, though a majority 59% (68% of those providing an answer) still expressed a preference to be so.

Several interviewees pointed out that that they are currently able to participate in requested acts under legislation in force and do take up this option. There were no reports of requests of this nature being made and then refused. The extent of current active participation or presence is, however, not proportionate to the level of desire for this expressed. One might speculate that resources and working practice tend to militate against such participation being anything other than an exception (4 interviewees expressly state this to be the case though interviewees were not directly questioned on this point).

National Prosecutors - overall

B 15 Would interviewee prefer to become directly involved in collecting evidence in another member state where interviewee makes a request?		
Answer	Count	Percentage
No (1)	31	23.48%
Yes (2)	87	65.91%
No answer	14	10.61%

National Prosecutors - financial interests

B 15 Would interviewee prefer to become directly involved in collecting evidence in another member state where interviewee makes a request?		
Answer	Count	Percentage
No (1)	2	5.71%
Yes (2)	28	80.00%
No answer	5	14.29%

National Prosecutors - trans-national crime

B 15 Would interviewee prefer to become directly involved in collecting evidence in another member state where interviewee makes a request?		
Answer	Count	Percentage
No (1)	18	28.13%
Yes (2)	38	59.38%
No answer	8	12.50%

The current situation sees national prosecutors positioned as relatively distanced service-providers to their colleagues abroad in such cases. This need not be viewed as problematic except that it stands in contrast to the strongly expressed desire to be directly involved in evidence gathering for ones own cases.

37.9% of interviewees stated their desire to always be involved. Amongst financial interest specialists a very strong preference was indicated with 80% expressing it.

There would thus certainly appear to be a need felt by practitioners to see – at least a significant proportion of their cases – run during investigations by the person who identifies with the case as a whole and can decide how to develop it as new facets emerge.

This speaks for such cases being dealt with by mobile prosecutors with both ad hoc arrangements such as JITs (though so far these have not been used frequently enough to be evaluated as such an option. Several interviewees reported on their participation in such structures in very large cases and were broadly positive of the opportunities offered) or more permanent dedicated units forming apparent options.

c) Hesitation/reservations

Interviewees trust in the current system for making requests abroad was further examined by asking about decisions not to make such requests. The general satisfaction expressed (see supra B.1.) was confirmed with 87% of interviewees overall claiming never to have decided against requesting a coercive measure in another EU member state due to uncertainty as to its legality there or concern in relation to admissibility in his or her own proceedings later. Amongst financial interests specialists this number is 89%,⁶ for trans-national specialist it is 86%.

National Prosecutors - overall

B 17 Has interviewee ever decided against requesting a coercive measure from another MS because interviewee was uncertain as to whether it was allowed in that MS or that the result produced would not be useable in interviewee's own jurisdiction?		
Answer	Count	Percentage
No (1)	115	87.12%
Yes: uncertain as to whether it is allowed in that MS (2)	9	6.82%
Yes: uncertain whether result produced would not be useable in your own jurisdiction (3)	8	6.06%
No answer	0	0.00%

⁶ even though a significant proportion of refusal reasons relate to finance-related legal problems e.g. bank secrecy 8 of 50 – so 16%, interviewees who stated that requests of theirs had been refused

National Prosecutors - financial interests

B 17 Has interviewee ever decided against requesting a coercive measure from another MS because interviewee was uncertain as to whether it was allowed in that MS or that the result produced would not be useable in interviewee's own jurisdiction?		
Answer	Count	Percentage
No (1)	31	88.57%
Yes: uncertain as to whether it is allowed in that MS (2)	3	8.57%
Yes: uncertain whether result produced would not be useable in your own jurisdiction (3)	1	2.86%

National Prosecutors - trans-national crime

B 17 Has interviewee ever decided against requesting a coercive measure from another MS because interviewee was uncertain as to whether it was allowed in that MS or that the result produced would not be useable in interviewee's own jurisdiction?		
Answer	Count	Percentage
No (1)	55	85.94%
Yes: uncertain as to whether it is allowed in that MS (2)	4	6.25%
Yes: uncertain whether result produced would not be useable in your own jurisdiction (3)	5	7.81%

3. *Evaluation of current efforts*

Some degree of insight into how successful the current set-up is was desirable for this study. With objective markers hard to come by, interviewees were also asked to reflect upon efforts made and results achieved.

a) Member state satisfaction

On the whole national prosecutorial practitioners appear fairly satisfied with the mechanisms in place and indeed their ability to deal with European cases. This is displayed, above all, by their negation of the need for further mechanisms or in-

stitutions. This rate stands in contrast, however, to the number of interviewees who state that development might be useful (see *infra* for analysis).

National Prosecutors - overall

B 7 (b) Are any further mechanisms or agencies necessary?		
Answer	Count	Percentage
No (1)	82	62.12%
Yes (2)	34	25.76%
No answer	16	12.12%

National Prosecutors - financial interests

B 7 (b) Are any further mechanisms or agencies necessary?		
Answer	Count	Percentage
No (1)	20	57.14%
Yes (2)	9	25.71%
No answer	6	17.14%

National Prosecutors - trans-national crime

B 7 (b) Are any further mechanisms or agencies necessary?		
Answer	Count	Percentage
No (1)	38	59.38%
Yes (2)	16	25.00%
No answer	10	15.63%

b) The supra-national view of MS efforts in general

Given, however, statements and actions⁷ at the EU level, one main strand of this study had to be to place this (national) evaluation in context. EuroNEEDs centres upon a hypothesis that there are criminal justice matters which require a European approach innate in which there is an understanding that the national perspective my

⁷ the strengthening of Europol, repeated requests by the Council that this agency be more strongly integrated into information evaluation exercises, alongside the new Eurojust Decision with its (e.g. article 13) information requirements.

be limited in its ability to recognise and deal with these lent credibility by the above noted reports of the European dimension as hampering. Thus interviews of national practitioners are presented alongside those with a maximum of 30 staff members of supra-nationalised criminal justice institutions. The results from their interviews are presented overall and with a breakdown only for EU financial interest specialists because all interviewees who are not the latter are trans-national crime experts.

Overall the majority of supra-national interviewees estimated the crime phenomenon they were interviewed about as increasing. 60% overall said so, whilst 10% thought it was remaining stable. No one believed the number of offences to be decreasing but almost one third of interviewees felt unable to provide an estimation of the crime trend. Almost half (47%) felt unable to comment as to how prosecution of them was developing but 33% believed them to be increasing as would be appropriate. 7% stated the number of prosecutions as decreasing whereas 13% felt their level remains stable.

Of the 14 financial interests expert supra-national interviewees, 50% believed this offence type to be increasing but only 36% that the number of prosecutions was increasing. No one believed these offences to be decreasing though 7% (1 interviewee) stated prosecutions were. 21% believed the number of offences to be remaining stable and 29% thought this was the case for the number of prosecutions.

The overall impression based upon these admittedly imprecise measures is thus mixed. However, the interviewees' impression seems to be that member state criminal justice responses are not fully in step with the developing relevant crime phenomenon though this development seems to be less out of step in relation to EU financial interest related offences.

Supra-national interviewees overall

B2 Is the number of such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (1)	18	60.00%
Decreasing (2)	0	0.00%
Remaining stable (3)	3	10.00%
Don't know (4)	9	30.00%
No answer	0	0.00%

B3 Are prosecutions of such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (1)	10	33.33%
Decreasing (2)	2	6.67%
Stable (3)	4	13.33%
Don't know (4)	14	46.67%
No answer	0	0.00%

Supra-national interviewees - financial interests.

B2 Is the number of such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (1)	7	50.00%
Decreasing (2)	0	0.00%
Remaining stable (3)	3	21.43%
Don't know (4)	4	28.57%
No answer	0	0.00%

B3 Are prosecutions of such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (1)	5	35.71%
Decreasing (2)	1	7.14%
Stable (3)	4	28.57%
Don't know (4)	4	28.57%
No answer	0	0.00%

c) Supra-national evaluation of the investigation and prosecution of European crimes in general

The obvious problem behind the study hypothesis of cases having a European dimension is the potential discrepancy between the national perspective as seen from the member states and the European dimension of these criminal phenomena.

Thus the central, preliminary question posed to practitioners working in the supra-national context was whether their nationally based colleagues fully recognised

such crimes; in their nature and full dimension. None of the supra-national interviewees took issue with the notion that there is a European, border transcending dimension to the criminal phenomena at issue. Their answers were as follows:

Supra-national interviewees - overall

B7 In your opinion, do member states recognise such crimes adequately?		
Answer	Count	Percentage
Yes (Y)	9	30.00%
No (N)	19	63.33%
Don't know (D)	2	6.67%
No answer	0	0.00%

Supra-national interviewees - financial interests

B7 In your opinion, do member states recognise such crimes adequately?		
Answer	Count	Percentage
Yes (Y)	5	35.71%
No (N)	8	57.14%
Don't know (D)	1	7.14%
No answer	0	0.00%

A clear majority - 63% overall, 57% relating to EU financial interest related offences (68% and 62% respectively of those who provided an answer) - of supra-national interviewees express the opinion that the member states' authorities fail to adequately recognise the true dimensions of such crimes, thus negating from the very outset the possibility that such crimes are handled as they should be by the latter.

This assessment of their nationally based colleagues work is also reflected in their overall impression of the criminal justice system treatment of these cases:

Supra-national interviewees - overall

B4 Are such crimes investigated adequately?		
Answer	Count	Percentage
Yes (Y)	10	33.33%
No (N)	17	56.67%

Don't know (D)	3	10.00%
No answer	0	0.00%

B4a Are sufficient resources available for their investigation?		
Answer	Count	Percentage
Yes (Y)	1	3.33%
No (N)	25	83.33%
Don't know (D)	4	13.33%
No answer	0	0.00%

B4b (Not for OLAF:) Do other factors hinder effective investigation?		
Answer	Count	Percentage
Practicalities (1)	9	30.00%
Languages (2)	4	13.33%
The law (3)	10	33.33%
Other (4)	18	60.00%
No (5)	1	3.33%

B5 Are such crimes prosecuted adequately?		
Answer	Count	Percentage
Yes (Y)	6	20.00%
No (N)	18	60.00%
Don't know (D)	6	20.00%
No answer	0	0.00%

B5a Are sufficient resources available for their prosecution?		
Answer	Count	Percentage
Yes (Y)	4	13.33%
No (N)	20	66.67%
Don't know (D)	6	20.00%
No answer	0	0.00%

B5b (Not for OLAF:) Do other factors hinder effective prosecution?		
Answer	Count	Percentage
Yes - Practicalities (Y1)	8	26.67%

Yes - the languages (Y3)	2	6.67%
Yes - the Law (Y4)	7	23.33%
Yes - other (Y2)	12	40.00%
No (N)	2	6.67%

Supra-national interviewees - financial interests

B4 Are such crimes investigated adequately?		
Answer	Count	Percentage
Yes (Y)	4	28.57%
No (N)	9	64.29%
Don't know (D)	1	7.14%
No answer	0	0.00%

B4a Are sufficient resources available for their investigation?		
Answer	Count	Percentage
Yes (Y)	1	7.14%
No (N)	12	85.71%
Don't know (D)	1	7.14%
No answer	0	0.00%

B4b (Not for OLAF:) Do other factors hinder effective investigation?		
Answer	Count	Percentage
Practicalities (1)	3	21.43%
Languages (2)	0	0.00%
The law (3)	3	21.43%
Other (4)	8	57.14%
No (5)	0	0.00%

B5 Are such crimes prosecuted adequately?		
Answer	Count	Percentage
Yes (Y)	2	14.29%
No (N)	10	71.43%
Don't know (D)	2	14.29%
No answer	0	0.00%

B5a Are sufficient resources available for their prosecution?		
Answer	Count	Percentage
Yes (Y)	2	14.29%
No (N)	10	71.43%
Don't know (D)	2	14.29%
No answer	0	0.00%

B5b (Not for OLAF:) Do other factors hinder effective prosecution?		
Answer	Count	Percentage
Yes - Practicalities (Y1)	4	28.57%
Yes - the languages (Y3)	0	0.00%
Yes - the Law (Y4)	0	0.00%
Yes - other (Y2)	6	42.86%
No (N)	1	7.14%

A clear majority of supra-national interviewees state that such cases are investigated inadequately in the member states. This declaration is made by a proportionately larger majority in relation to EU financial interest related offences. Supra-national interviewees were often careful to express their understanding for and to negate any notion of ill will or lack of competence on the part of their member state based colleagues (9 supra-national interviewees – 30% - expressly state that failures are due to other factors) but they were firm in their evaluation of this result. A vast majority (83% overall and 86% for EU financial interest specialists) stated that insufficient resources are available for the investigation of such cases though other factors⁸ are also stated to hinder investigations. Logically supra-national interviewees went on in the majority to declare the following prosecutions to be inadequate though in less clear proportions (60% overall, 71% of EU financial interest specialists). A number of respondents chose to describe the situation as inadequate because no adequate prosecution can follow inadequate investigation; others chose to limit their affirmation of adequacy to the material provided by the investigations conducted. A clear majority of supra-national interviewees stated a lack of resources as a major problem for the prosecution of these cases. A few (3, 10%) interviewees pointed out that resource challenges are greater for prosecutors than for investigators and again, several (9 – 30%) were careful to direct their criticism at

⁸ differences in laws, need to take new paths, lack of training, inability to see full perspective, unwillingness to take cases on fully

such hindering factors rather than at their member states colleagues. Nevertheless a smaller proportion of supra-national interviewees indicated inadequate prosecution as a problem; this presumably also reduced to a degree because interviewees here too measured adequacy with reference what resources are generally available to criminal justice systems and within the context of general resource shortages. Other factors were also stated to hinder prosecutions though not to such a great extent as investigations.

The study perspective provided by supra-national interviewees is thus conclusive. Indicators provided by national interviewees that European cases place them before challenges is strongly confirmed by their colleagues working in supra-nationalised settings. A majority of supra-national interviewees – slightly less strong for EU’s financial interests specialists – assert that such cases are not fully recognised; a clear majority attesting that they are neither investigated nor prosecuted adequately. This assertion is significantly stronger for EU’s financial interests offences with, in particular, prosecution appearing a problem for these cases. More generally, investigations in particular are reported as inadequate.

The study thus indicates a need for further action to provide for adequate investigation and prosecution of European cases. Comments indicate that this is particularly most urgent relating to cases concerning the EU’s financial interest cases, especially in relation to their prosecution.

Supra-national interviewees were then questioned in more detail about various aspects of the investigative and then prosecutorial stage to explore the foundations of the more general comments reported in the previous section. Their more nuanced responses are presented in the following two sections.

d) Investigation

Having expressed that investigations into European cases are currently inadequate, supra-national interviewees nevertheless confirmed that the vast majority of their cases at the investigative stage stem from the member states. 80% overall and 79% of EU financial interest specialists stated that member states’ authorities do not react with criminal proceedings mostly when they (the supra-national practitioners) ask them to. In other words the status quo relies mostly upon national authorities to recognise European crimes and launch investigations (even though they are regarded as not being in a particularly good position to do the former). A clear majority – 60% overall (or 69% of those answering) and 64% (again 69% of those

responding) of EU financial interest specialists associate a tendency to reduce investigations to aspects of national relevance with member states' investigative authorities. Although 30% of supra-national interviewees state that member states willingness to investigate is increasing, 50% that it remains stable (no one that it is decreasing), EU financial interest specialists 21% and 64% respectively, 60 and 71% respectively state that such investigations are hampered by the European dimension - practicalities are mentioned most often although differences in law (2), bad past experiences and even the perception of complexity and even unwillingness of practitioners to act because they are set in their ways (2), are mentioned.

Supra-national interviewees - overall

B7a Do they tend to reduce investigations only to that of national relevance?		
Answer	Count	Percentage
Yes (Y)	18	60.00%
No (N)	8	26.67%
Don't know (D)	4	13.33%
No answer	0	0.00%

B7b Do they react with criminal proceedings primarily when you ask them to?		
Answer	Count	Percentage
Yes (Y)	3	10.00%
No (N)	24	80.00%
Don't know (D)	3	10.00%
No answer	0	0.00%

B8 Is the MS willingness to investigate such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (I)	9	30.00%
Decreasing (D)	0	0.00%
Remaining stable (S)	15	50.00%
No answer	6	20.00%

B10 Are investigations hampered by the European Dimension (i.e. do MS authorities shy away from them because they are legally or practically complex)?		
Answer	Count	Percentage
Yes - legally complex (Y1)	2	6.67%
Yes - practicalities (Y2)	7	23.33%
Yes - language (Y3)	2	6.67%
Yes - other (Y4)	13	43.33%
No (N)	9	30.00%
Don't know (D)	3	10.00%

Supra-national interviewees - financial interests

B7a Do they tend to reduce investigations only to that of national relevance?		
Answer	Count	Percentage
Yes (Y)	9	64.29%
No (N)	4	28.57%
Don't know (D)	1	7.14%
No answer	0	0.00%

B7b Do they react with criminal proceedings primarily when you ask them to?		
Answer	Count	Percentage
Yes (Y)	2	14.29%
No (N)	11	78.57%
Don't know (D)	1	7.14%
No answer	0	0.00%

B8 Is the MS willingness to investigate such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (I)	3	21.43%
Decreasing (D)	0	0.00%
Remaining stable (S)	9	64.29%
No answer	2	14.29%

B10 Are investigations hampered by the European Dimension (i.e. do MS authorities shy away from them because they are legally or practically complex)?		
Answer	Count	Percentage
Yes - legally complex (Y1)	1	7.14%
Yes - practicalities (Y2)	4	28.57%
Yes - language (Y3)	1	7.14%
Yes - other (Y4)	7	50.00%
No (N)	3	21.43%
Don't know (D)	1	7.14%

e) Prosecution

Similarly supra-national interviewees were questioned as to their assessment of prosecutions in the current set-up which foresees this as the responsibility of member state authorities. Their assessment of member state willingness to prosecute corresponds fairly closely with their willingness to investigate such cases (see supra). Overall 30% see this as increasing, 33% it as being stable whilst 37% felt unable to provide an answer (this higher proportion of non-responses generated largely because Europol based practitioners felt too far removed from prosecutions to judge this). EU financial interest specialists' views on this matter corresponded more closely to the overall opinion (than was the case for investigations – also of course because they form a greater proportion of the overall responses) with 29% testifying to an increase and 43% to willingness to prosecute as stable.

The tendency to reduce prosecutions only to matters of national relevance is markedly lower overall (40% or 52% of interviewees providing an answer compared to 60% in relation to investigations) though somewhat less so in the opinion of EU financial interest specialists (57%). It is important in interpreting this data to bear in mind that a clear majority of 67% overall and 57% of EU financial interest specialists negate expressly prosecutors as taking on such cases primarily when asked to do so by supra-nationalised institutions. Displaying simultaneously that enforcement of the law is dependent upon member state authorities but also that they often take these on upon their own initiative. Furthermore there is some agreement that member state authorities treat European offences with the same priority as national ones – in other words the reasons these cases are not treated entirely satisfactorily when this is the case, are the same as why complex national cases are not dealt with adequately. Interestingly agreement that there is no specific

discrimination against European cases is particularly strong amongst EU financial interest specialist supra-national interviewees at 64%. Financial crimes are complex, time- and resource-consuming full stop; their investigation and prosecution generally marked by compromise and inadequacy it would seem. When prosecutions of trans-national crimes are included in the calculation, supra-national interviewees are less confident they are treated equally with only 50% agreeing that they are. Interestingly, however, the overall figures display 27% of supra-national interviewees negating the majority of national interviewees' belief that European cases are treated with the same priority and 23% responding they have insufficient knowledge or providing no answer. EU financial interest specialists have more clearly formed opinions with only 14% not expressing an opinion and 21% disagreeing (vehemently) with a notion that member states protect the EU's financial interests as well as their own.

Despite their mostly positive note - that the member states do not discriminate against enforcing the law in European cases, they are fairly unified in their assessment of the current enforcement situation as inadequate. 80% of supra-national interviewees overall regard the situation as less than adequate or requiring improvement whilst not one EU financial interest specialists regards the current scenario as adequate or better. Accordingly the majority of supra-national interviewees assess their own contribution to ensuring European cases are fully prosecuted as less than successful. Those who viewed themselves as successful in part measured their success by what is realistically manageable given the current context. EU financial interest specialist supra-national interviewees were particularly reserved in an overall evaluation of their own achievements as defined by the study.

As to the details of the current set-up a clear majority⁹, regard the resources devoted to these cases as inadequate. Whilst only a minority (27% overall) regard the member state systems as containing disincentives to prosecutors bringing such cases (and note that national prosecutors are more critical of their systems in this respect). Only a small minority overall report diversionary measures¹⁰ (17% overall) or deals (13%, 29%) being used more frequently to end-tem pre-trial. This minority is more significant amongst EU financial interest specialists (in both cases 29%). The vast majority clearly reject the idea, however, that member state systems re-

⁹ 60% overall – 81% of those providing answers; again Europol based practitioners remained reticent in providing an opinion – and 71% of EU financial interest specialists.

¹⁰ cases being dropped or disposed of despite an assumption of guilt.

ward and therefore encourage prosecutors to take on the extra effort such cases require.¹¹

A clear indicator of the specific way in which European cases currently “suffer” is provided with 40% of supra-national interviewees overall declaring that cases are reduced to aspects of national relevance. EU’s financial interests offences are a clear loser in this respect with a far higher 57% majority declaring this to be the case – possibly partially explained by the more sharply felt resource shortage described in this area.

It must be emphasised that the study gives little indication of European cases being actively discriminated against. They suffer from lack of recognition and, amongst other things, from resource shortages.

It should, however, be noted that national prosecutor interviewees agree with the supra-national interviewees’ impression that the European dimension suffers at the hands of member states’ national criminal justice systems. Within these priority is naturally given to issues as viewed by the member states. If member state authorities do not fully recognise European cases – as illustrated above – this cannot but lead to inadequate investigations and prosecutions. Furthermore referral to resource shortages is frequent and this status quo is a natural consequence. The member states have no reason to denote the resources needed to European cases as opposed to others they view as more important.

There is nothing surprising or indeed underhand about this per se but this study appears to provide evidence to those who assert that the member states do not protect European interests at the same level as their own. This cannot but be taken as indication of a need to consider a more active, independent system or independently resourced activity to ensure the European dimension of cases is adequately attended to.

Discussions and reforms underway to allow Europol and Eurojust an informational basis and rights to initiate cases are confirmed as justified by these results. Discussion concerning reforming OLAF and a potential European Public Prosecutor or alternatives appear necessary in the light of these results.

¹¹ only 10% overall and 7% of EU financial interest specialists say they do so.

Supra-national interviewees - overall

B14 Is the MS willingness to prosecute such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (I)	9	30.00%
Decreasing (D)	0	0.00%
Remaining stable (S)	10	33.33%
No answer	11	36.67%

B14a Do they tend to reduce prosecutions only to that of national relevance?		
Answer	Count	Percentage
Yes (Y)	12	40.00%
No (N)	11	36.67%
Don't know (D)	7	23.33%
No answer	0	0.00%

B14b Do they react with criminal prosecutions primarily when you ask them to?		
Answer	Count	Percentage
Yes (Y)	4	13.33%
No (N)	20	66.67%
Don't know (D)	5	16.67%
No answer	1	3.33%

B15 Member states' authorities seem to believe that trans- and supra-national cases are treated with the same priority. Do you agree?		
Answer	Count	Percentage
Yes (Y)	15	50.00%
No (N)	8	26.67%
Don't know (D)	5	16.67%
No answer	2	6.67%

B16 How successful would you say you are in ensuring such cases can be (fully) prosecuted?		
Answer	Count	Percentage
Very Successful (1)	6	20.00%

Successful (2)	8	26.67%
Not so successful (3)	9	30.00%
Unsuccessful (4)	1	3.33%
Don't know (5)	6	20.00%
No answer	0	0.00%

B17 In how far would you say the current set up is adequate to ensure such cases are successfully (and fully) prosecuted?		
Answer	Count	Percentage
More than adequate (1)	0	0.00%
Adequate (2)	5	16.67%
Less than adequate (3)	11	36.67%
Poor (4)	1	3.33%
could be improved (5) (of which relating to legal harmonisation)	6 (4)	20.00%
see comment (6) (diverse)	6	20.00%
No answer	1	3.33%

B17a In your opinion: Are adequate resources devoted to such cases?		
Answer	Count	Percentage
Yes (Y)	4	13.33%
No (N)	18	60.00%
Don't know (D)	8	26.67%
No answer	0	0.00%

B17b In your opinion: Do MS systems contain disincentives for prosecutors to bring such cases?		
Answer	Count	Percentage
Yes (Y)	8	26.67%
No (N)	15	50.00%
Don't know (D)	7	23.33%
No answer	0	0.00%

B17c In your opinion: Are diversionary measures used more frequently to end such cases?		
Answer	Count	Percentage
Yes (1)	5	16.67%
No (2)	11	36.67%
Don't know (3)	10	33.33%
Other (4) <i>of which:</i> not applicable charging so as to reduce one case to many small ones	4 3 1	13.33%
No answer	0	0.00%

B17d In your opinion: Are such cases frequently subject to a deal being made when you would expect prosecution?		
Answer	Count	Percentage
Yes (1)	4	13.33%
No (2)	8	26.67%
Don't know (3)	11	36.67%
Other (4) <i>of which:</i> not applicable possibly	6 4 2	20.00%
No answer	1	3.33%

B17e In your opinion: Do professional performance indicators in the MS adequately reward prosecutors for (the extra effort of) bringing such cases?		
Answer	Count	Percentage
Yes (1)	3	10.00%
No (2)	15	50.00%
Don't know (3)	12	40.00%
No answer	0	0.00%

Supra-national interviewees - financial interests

B14 Is the MS willingness to prosecute such crimes increasing, decreasing or remaining stable?		
Answer	Count	Percentage
Increasing (I)	4	28.57%
Decreasing (D)	0	0.00%

Remaining stable (S)	6	42.86%
No answer	4	28.57%

B14a Do they tend to reduce prosecutions only to that of national relevance?

Answer	Count	Percentage
Yes (Y)	8	57.14%
No (N)	5	35.71%
Don't know (D)	1	7.14%
No answer	0	0.00%

B14b Do they react with prosecutions primarily when you ask them to?

Answer	Count	Percentage
Yes (Y)	4	28.57%
No (N)	8	57.14%
Don't know (D)	1	7.14%
No answer	1	7.14%

B15 Member states' authorities seem to believe that trans- and supra-national cases are treated with the same priority. Do you agree?

Answer	Count	Percentage
Yes (Y)	9	64.29%
No (N)	3	21.43%
Don't know (D)	1	7.14%
No answer	1	7.14%

B16 How successful would you say you are in ensuring such cases can be (fully) prosecuted?

Answer	Count	Percentage
Very Successful (1)	2	14.29%
Successful (2)	3	21.43%
Not so successful (3)	6	42.86%
Unsuccessful (4)	1	7.14%
Don't know (5)	2	14.29%
No answer	0	0.00%

B17 In how far would you say the current set up is adequate to ensure such cases are successfully (and fully) prosecuted?		
Answer	Count	Percentage
More than adequate (1)	0	0.00%
Adequate (2)	0	0.00%
Less than adequate (3)	9	64.29%
Poor (4)	1	7.14%
could be improved (5) (both relate to legal harmonisation)	2	14.29%
see comment (6)	2	14.29%
No answer	0	0.00%

B17a In your opinion: Are adequate resources devoted to such cases?		
Answer	Count	Percentage
Yes (Y)	1	7.14%
No (N)	10	71.43%
Don't know (D)	3	21.43%
No answer	0	0.00%

B17b In your opinion: Do MS systems contain disincentives for prosecutors to bring such cases?		
Answer	Count	Percentage
Yes (Y)	4	28.57%
No (N)	8	57.14%
Don't know (D)	2	14.29%
No answer	0	0.00%

B17c In your opinion: Are diversionary measures used more frequently to end such cases?		
Answer	Count	Percentage
Yes (1)	4	28.57%
No (2)	4	28.57%
Don't know (3)	4	28.57%
Other (4) <i>of which: not applicable</i> charging so as to reduce one	2 1	14.29%

case to many small ones	1	
No answer	0	0.00%

B17d In your opinion: Are such cases frequently subject to a deal being made when you would expect prosecution?		
Answer	Count	Percentage
Yes (1)	4	28.57%
No (2)	4	28.57%
Don't know (3)	3	21.43%
Other (4)	2	
<i>of which:</i> not applicable	1	14.29%
possibly	1	
No answer	1	7.14%

B17e In your opinion: Do professional performance indicators in the MS adequately reward prosecutors for (the extra effort of) bringing such cases?		
Answer	Count	Percentage
Yes (1)	1	7.14%
No (2)	7	50.00%
Don't know (3)	6	42.86%
No answer	0	0.00%

Given the supra-national interviewees clear indication that European cases are not recognised fully by their national colleagues, their apparent dependency upon the latter to initiate their work must be considered critically.

If, as current developments appear to indicate, a European criminal justice system is set to emerge, powers to initiate cases altogether, priority setting in dealing with them and reward for professionals doing so (presumably still from within the member states criminal justice systems) require systematic discussion.

Offences affecting the EU's financial interests in particular appear to suffer disproportionately from a lack of resources being devoted to them as well as a reduction of prosecutions to only those aspects of cases relevant to the national jurisdiction of the member state in whose criminal justice system they are prosecuted.

A more urgent review for this aspect of European criminal justice activity would thus appear called for.

C. Supra-nationalised assistance

The current set up for dealing with European cases sees primary responsibility for them resting with the member states as the sole sovereign over criminal proceedings relating to their territory. Over the previous decades the EU has provided (or been used as a framework by the member states in which to make certain provisions for) a number of institutions and mechanisms to assist and support the member state authorities in dealing with European cases. In this section EuroNEEDs explores which of these institutions, mechanisms and tools the member state authorities make use of and any preferences they relating to them.

1. Use of current institutions

The rate at which national interviewees use EU created mechanisms and institutions is displayed below. Not surprisingly the European Arrest Warrant (EAW) is used most frequently due to its application. Clearly however simple tools they can use directly themselves have good potential and a high rate of acceptance amongst prosecutors. The use of institutions is clearly related to the crime area and types of cases prosecutors deal with as well as the actions they undertake. Europol and databases are reported as being used fairly rarely, OLAF clearly used far more frequently by national EU financial interest specialists than anyone else. Interestingly Eurojust is used considerably more frequently across the board than the European Judicial Network (EJN) – with 60 as opposed to 19 interviewees stating they use the former or the latter respectively more often than the other. However, the 19 who use the EJN more frequently were particularly vociferous in their assertion that the EJN contained the network level they required whilst Eurojust is very useful for larger cases, when higher level meetings are required. Thus this preference may well be a consequence of the survey sample.

National Prosecutors - overall

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[EAW:]		
Answer	Count	Percentage
For all cases (1)	5	3.79%
Frequently (2)	75	56.82%
Occasionally (3)	21	15.91%

Rarely (4)	10	7.58%
Never (5)	21	15.91%
No answer	0	0.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [OLAF:]		
Answer	Count	Percentage
For all cases (1)	2	1.52%
Frequently (2)	15	11.36%
Occasionally (3)	13	9.85%
Rarely (4)	26	19.70%
Never (5)	76	57.58%
No answer	0	0.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [Eurojust:]		
Answer	Count	Percentage
For all cases (1)	3	2.27%
Frequently (2)	62	46.97%
Occasionally (3)	30	22.73%
Rarely (4)	17	12.88%
Never (5)	20	15.15%
No answer	0	0.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [Europol:]		
Answer	Count	Percentage
For all cases (1)	3	2.27%
Frequently (2)	21	15.91%
Occasionally (3)	16	12.12%
Rarely (4)	25	18.94%
Never (5)	67	50.76%
No answer	0	0.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [EJN:]		
Answer	Count	Percentage
For all cases (1)	3	2.27%
Frequently (2)	39	29.55%
Occasionally (3)	23	17.42%
Rarely (4)	18	13.64%
Never (5)	49	37.12%
No answer	0	0.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [Database (please specify):]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	14	10.61%
Occasionally (3)	7	5.30%
Rarely (4)	23	17.42%
Never (5)	88	66.67%
No answer	0	0.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [Other (please specify):]		
Answer	Count	Percentage
For all cases (1)	1	0.76%
Frequently (2)	10	7.58%
Occasionally (3)	16	12.12%
Rarely (4)	15	11.36%
Never (5)	90	68.18%
No answer	0	0.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [FinCen in European cases?]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	0	0.00%
Occasionally (3)	0	0.00%
Rarely (4)	7	5.30%
Never (5)	125	94.70%
No answer	0	0.00%

B 7(a) Explanation: Please specify any database(s) &/or other mechanisms used:		
Answer	88	66.67%
<i>of which:</i> Atlas/EJN database	12	
<i>of which:</i> SIS	9	
<i>of which:</i> Carin Network	5	
<i>of which:</i> Legislative Databases	4	
<i>of which:</i> Criminal records	4 (3 experimental project, 1 of other countries)	
<i>of which:</i> Ministries of Justice	3	
<i>of which:</i> Solon	1	
<i>of which:</i> Europol database	1	
<i>of which:</i> Interpol Database	1	
<i>of which:</i> Financial information systems	1	
<i>of which:</i> VAT databases	1	
<i>of which:</i> state that access to databases is a police matter	28	
No answer	44	33.33%

National Prosecutors - financial interests

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)? [EAW:]		
Answer	Count	Percentage
For all cases (1)	1	2.86%

Frequently (2)	14	40.00%
Occasionally (3)	9	25.71%
Rarely (4)	5	14.29%
Never (5)	6	17.14%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?

[OLAF:]

Answer	Count	Percentage
For all cases (1)	2	5.71%
Frequently (2)	7	20.00%
Occasionally (3)	3	8.57%
Rarely (4)	11	31.43%
Never (5)	12	34.29%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?

[Eurojust:]

Answer	Count	Percentage
For all cases (1)	1	2.86%
Frequently (2)	12	34.29%
Occasionally (3)	11	31.43%
Rarely (4)	6	17.14%
Never (5)	5	14.29%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?

[Europol:]

Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	2	5.71%
Occasionally (3)	4	11.43%

Rarely (4)	8	22.86%
Never (5)	21	60.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?

[EJN:]

Answer	Count	Percentage
For all cases (1)	1	2.86%
Frequently (2)	7	20.00%
Occasionally (3)	5	14.29%
Rarely (4)	5	14.29%
Never (5)	17	48.57%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?

[Database (please specify):]

Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	4	11.43%
Occasionally (3)	5	14.29%
Rarely (4)	5	14.29%
Never (5)	21	60.00%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?

[Other (please specify):]

Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	1	2.86%
Occasionally (3)	3	8.57%
Rarely (4)	5	14.29%
Never (5)	26	74.29%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[FinCen in European cases?]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	0	0.00%
Occasionally (3)	0	0.00%
Rarely (4)	3	8.57%
Never (5)	32	91.43%

National Prosecutors - trans-national crime

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[EAW:]		
Answer	Count	Percentage
For all cases (1)	3	4.69%
Frequently (2)	43	67.19%
Occasionally (3)	8	12.50%
Rarely (4)	3	4.69%
Never (5)	7	10.94%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[OLAF:]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	2	3.13%
Occasionally (3)	4	6.25%
Rarely (4)	9	14.06%
Never (5)	49	76.56%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[Eurojust:]		
Answer	Count	Percentage
For all cases (1)	1	1.56%
Frequently (2)	26	40.63%
Occasionally (3)	17	26.56%
Rarely (4)	8	12.50%
Never (5)	12	18.75%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[Europol:]		
Answer	Count	Percentage
For all cases (1)	1	1.56%
Frequently (2)	15	23.44%
Occasionally (3)	6	9.38%
Rarely (4)	13	20.31%
Never (5)	29	45.31%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[EJN:]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	22	34.38%
Occasionally (3)	11	17.19%
Rarely (4)	11	17.19%
Never (5)	20	31.25%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[Database (please specify):]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	8	12.50%
Occasionally (3)	1	1.56%
Rarely (4)	14	21.88%
Never (5)	41	64.06%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[Other (please specify):]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	7	10.94%
Occasionally (3)	8	12.50%
Rarely (4)	6	9.38%
Never (5)	43	67.19%

B 7 Which of the mechanisms created by the EU does interviewee use (and how often)?		
[FinCen in European cases?]		
Answer	Count	Percentage
For all cases (1)	0	0.00%
Frequently (2)	0	0.00%
Occasionally (3)	0	0.00%
Rarely (4)	2	3.13%
Never (5)	62	96.88%

Preferences relating to current institutions

The preferences which emerge in the above tables were confirmed by the national interviewees themselves when they were asked to declare which mechanisms and institutions they use most frequently (more than one was possible). The EAW and Eurojust emerged as most important in all categories. With OLAF making significantly greater impact in EU financial interest related cases and the EJM proving to have a fairly high profile in trans-national crime cases.

Interestingly overall and for trans-national crimes it is the efficiency gain promised by this mechanism or institution which is (respectively marginally and significantly) more important in determining the choice made rather than the nature of cases. For EU financial interest cases it is this latter factor which is more important.

The Luxemburg report expresses prosecutors there as having clear preferences as to the institutions used. It includes dissatisfaction with the pace of work at Eurojust expressing strong preference for the EJM network seen as a non-bureaucratic structure focused on practitioners on the ground. Europol is also described as less efficient than Interpol and co-operation with OLAF as having great potential for improvement via better communication. The EAW is emphasised to have been beneficial.¹² Whilst these comments are certainly not without parallels in the survey sample in general, they are not in line with the majority findings outlined above.

National Prosecutors - overall

B 9 Which, if any, of these mechanisms does interviewee use most frequently? Please comment below:		
Answer	Count	Percentage
EAW: (1)	72	54.55%
OLAF: (2)	18	13.64%
Eurojust: (3)	79	59.85%
Europol: (4)	21	15.91%
EJM (5)	46	34.85%
FinCen for EU cases (6)	1	0.76%
Database or other (please explain) associated with the (emerging) principle of	5	3.79%

¹² Braum, p. 13-4

availability of data (7)		
Other	30	22.73%

B 9(a) Why?		
Answer	Count	Percentage
Nature of cases (1)	73	55.30%
Method provides the greatest efficiency gains (2)	77	58.33%
Other	7	5.30%

National Prosecutors - financial interests

B 9 Which, if any, of these mechanisms does interviewee use most frequently? Please comment below:		
Answer	Count	Percentage
EAW: (1)	16	45.71%
OLAF: (2)	10	28.57%
Eurojust: (3)	20	57.14%
Europol: (4)	2	5.71%
EJN (5)	4	11.43%
FinCen for EU cases (6)	1	2.86%
Database or other (please explain) associated with the (emerging) principle of availability of data (7)	2	5.71%
Other	3	8.57%

B 9(a) Why?		
Answer	Count	Percentage
Nature of cases (1)	17	48.57%
Method provides the greatest efficiency gains (2)	14	40.00%
Other	2	5.71%

National Prosecutors - trans-national crime

B 9 Which, if any, of these mechanisms does interviewee use most frequently? Please comment below:		
Answer	Count	Percentage
EAW: (1)	39	60.94%
OLAF: (2)	3	4.69%
Eurojust: (3)	34	53.13%
Europol: (4)	11	17.19%
EJN (5)	26	40.63%
FinCen for EU cases (6)	0	0.00%
Database or other (please explain) associated with the (emerging) principle of availability of data (7)	2	3.13%
Other	21	32.81%

B 9(a) Why?		
Answer	Count	Percentage
Nature of cases (1)	32	50.00%
Method provides the greatest efficiency gains (2)	41	64.06%
Other	5	7.81%

a) Contact between of member state authorities and supra-national institutions

To provide some perspective on how the supra-national institutions are used, supra-national interviewees were asked in detail about their contact with member state authorities. 47% overall and 43% of EU financial interest specialist supra-national interviewees explained that they work with a variety of member state authorities. A large minority (27 and 36% respectively) explained that their work involved contact with a group of “usual suspects” (practitioners who contact them repeatedly). In part (10 interviewees or 33.3%), especially for EU financial interest related offences, this is explained by the specialist structures in the member states but it can also be taken as a sign that the services of supra-national interviewees are only accepted by a limited section of member state criminal justice agencies. A

smaller minority (23 and 21% respectively) work with a variety of member state authorities as well as a staple “customer” base of “usual suspects”.

Supra-national interviewees - overall

B9 When working with member state authorities, who do you usually work with?		
Answer	Count	Percentage
Usual suspects (U)	8	26.67%
Variety (V)	14	46.67%
Both (1)	7	23.33%
No answer	1	3.33%

Supra-national interviewees - financial interests

B9 When working with member state authorities, who do you usually work with?		
Answer	Count	Percentage
Usual suspects (U)	5	35.71%
Variety (V)	6	42.86%
Both (1)	3	21.43%
No answer	0	0.00%

b) Inter-action

The ways in which practitioners based in supra-national institutions receive cases are detailed below. Not surprisingly the majority of supra-national interviewees working at Eurojust received most of their cases via other national desks or from their own member state authorities. At Europol reports via liaison desks and the designated national contact offices played a major role. Several Europol based interviewees also mentioned cases developing from analyses performed at the request of one member state because it results in further cases in other member states (when the initiating member state agrees to the intelligence provided being passed on). The central point is to note that overall 23% of interviewees mentioned starting cases upon their own initiative and that this percentage is higher for EU financial interest specialist 29%.

This need to display own initiative to ensure cases are triggered appropriately is underlined by the negative assessment of member state authorities’ use of these supra-national institutions. Overall only 20% of supra-national interviewees esti-

mate member state authorities as contacting them appropriately in at least the majority of relevant cases. For EU financial interest specialist supra-national interviewees this is a mere 14%. Naturally this does not mean that cases are not always carried out; it can as easily be indicative of a lack of acceptance of supra-national institutions (and thus an unwillingness to include them in cases) by member state authorities. This is certainly an indication that the supra-national interviewees estimate the national authorities as dealing with the majority of relevant cases without including them. Given the clarity with which supra-national interviewees rejected the member state authorities' ability to adequately recognise European crimes in their full scope and nature, this cannot but be viewed as potentially to the detriment of their handling.

The supra-national interviewees view such deficits as a broader phenomenon with 83% declaring that member state authorities do not make comprehensive use of the mechanisms and institutions placed at their disposal by the EU overall – this result confirming the apparent need for own initiative reported above. EU financial interest specialist supra-national interviewees express their higher degree of dissatisfaction: declaring this at a rate of 100%. Overall this is attributed in the majority to a lack of knowledge though a rejection of EU institutions or indeed even a fear of them are also reported as significant contributory factors. According to the EU financial interest specialist supra-national interviewees, these two later factors are more significant – fear all the more so (with interviewees mentioning the fear of “clearing the books” proceedings as a severe hindrance) though lack of knowledge is also cited by 50% of these.

A need for initiative at the supra-national level is further confirmed by responses concerning first contact. Although only 17% overall and a more significant 36% of EU financial interest specialist supra-national interviewees report themselves as making contact with the member state authorities, 50% of both groups indicate that contact and initiative goes both ways and only 17% and 14% respectively that they are merely receivers of member state initiatives.

On a positive note the majority of supra-national interviewees declare member state authorities as co-operating adequately with them during investigations. 67% overall, with 23% saying this varies, view member state authorities as cooperating. EU financial interest specialist are more reserved with only 50% ready to say member state authorities co-operate adequately and 36% stating that this varies.

Supra-national interviewees - overall

B11 How do you usually discover cases?		
Answer	Count	Percentage
police report (1)	7	23.33%
victim report (2)	3	10.00%
report via Europol (3)	9	30.0%
other report (MS desk at Eurojust) (4)	9	30.0%
other report (others) (5)	19	63.33%
<i>of which:</i> MS authority	13	
<i>of which:</i> Anonymous tip-off	6	
<i>of which:</i> Court of Auditors	2	
<i>of which:</i> Audit	2	
<i>of which:</i> European Central Bank	1	
own initiative (6)	7	23.33%
other (7) misc., statistical analysis, not applicable	4	13.33%

B13 Do MS institutions co-operate adequately during investigation?		
Answer	Count	Percentage
Yes (Y)	20	66.67%
No (N)	1	3.33%
Varies (V)	7	23.33%
Don't know (D)	1	3.33%
No answer	1	3.33%

B19 Do you estimate the MS authorities as contacting you appropriately in all (or the majority of) relevant cases?		
Answer	Count	Percentage
Yes (Y)	6	20.00%
No - don't know about us (N1)	3	10.00%
No - don't want to use us (N2)	2	6.67%
No - Other (N3)	17	56.67%
Don't know (D)	2	6.67%
No answer	0	0.00%

B18 Do you mostly make contact with member states authorities or do they come to you?		
Answer	Count	Percentage
We make contact (E18)	5	16.67%
They come to us (E19)	10	33.33%
Both (E20)	15	50.00%
No answer	0	0.00%

B20 Do MS authorities make comprehensive use of the mechanisms and institutions placed at their disposal by the EU?		
Answer	Count	Percentage
Yes (Y)	2	6.67%
No (N)	25	83.33%
Don't know (D)	3	10.00%
No answer	0	0.00%

B20a If not, why not?		
Answer	Count	Percentage
Lack of knowledge (1)	17	56.67%
Lack of training (2)	1	3.33%
Believe they are better off without (3)	10	33.33%
Fear of EU institutions (4)	5	16.67%
Other (5)	13	43.33%

Supra-national interviewees - financial interests

B11 How do you usually discover cases?		
Answer	Count	Percentage
police report (1)	5	35.71%
victim report (2)	3	21.43%
other report (Europol) (3)	1	7.14%
other report (MS desk at Eurojust) (4)	3	21.43%
other report (others) (5)	10	71.43%
<i>of which: MS authority</i>	6	
<i>of which: Anonymous tip-off</i>	6	
<i>of which: Court of Auditors</i>	2	

<i>of which: Audit</i>	2	
<i>of which: European Central Bank</i>	1	
own initiative (6)	4	28.57%
other (7)	2	14.29%

B13 Do MS institutions co-operate adequately during investigation?		
Answer	Count	Percentage
Yes (Y)	7	50.00%
No (N)	1	7.14%
Varies (V)	5	35.71%
Don't know (D)	1	7.14%
No answer	0	0.00%

B19 Do you estimate the MS authorities as contacting you appropriately in all (or the majority of) relevant cases?		
Answer	Count	Percentage
Yes (Y)	2	14.29%
No - don't know about us (N1)	0	0.00%
No - don't want to use us (N2)	1	7.14%
No - Other (N3)	10	71.43%
Don't know (D)	1	7.14%
No answer	0	0.00%

B18 Do you mostly make contact with member states authorities or do they come to you?		
Answer	Count	Percentage
We make contact (E18)	5	35.71%
They come to us (E19)	2	14.29%
Both (E20)	7	50.00%
No answer	0	0.00%

B20 Do MS authorities make comprehensive use of the mechanisms and institutions placed at their disposal by the EU?		
Answer	Count	Percentage
Yes (Y)	0	0.00%
No (N)	14	100.00%

Don't know (D)	0	0.00%
No answer	0	0.00%

B20a If not, why not?		
Answer	Count	Percentage
Lack of knowledge (1)	7	50.00%
Lack of training (2)	0	0.00%
Believe they are better off without (3)	5	35.71%
Fear of EU institutions (4)	4	28.57%
Other (5)	6	42.86%

Seen from the perspective of practitioners working in supra-nationalised institutions, the dovetailing of national criminal justice systems with institutions at the EU level is clearly unsatisfactory. These supra-nationalised institutions cannot have any impact without acceptance and indeed mostly initial contact from member state authorities. Whilst this situation is likely improving, such betterment certainly appears to be strongly needed.

It is interesting to note that a significant number of supra-national interviewees indicate some activity undertaken upon their own initiative – presumably (at least in part, within Eurojust, of course, some national members remain empowered to initiate cases as national prosecutors of their national jurisdiction) using contact to their former colleagues in the member states to overcome the differences in perspective reported above.

2. *National assessment of current supra-nationalised institutions*

The EuroNEEDs study also set out to evaluate the success of current mechanisms in assisting member state authorities in their work on European cases and thus national interviewees were asked a number of questions as to how EU created mechanisms and institutions affected their work.

Overall 90% of nationally based interviewees responded that the EU created mechanisms and institutions discussed above have improved their access to evidence and suspects in other member states. For nationally based EU financial interest specialist 91% did so, whilst their trans-national crime specialised colleagues agreed at a rate of 88%. The mechanisms and institutions introduced by the EU can thus certainly be regarded as a success and a step forwards (and these comments be

read as particularly relevant for those mentioned above as being used most frequently: the EAW, Eurojust and in specific contexts the EJM and OLAF).

On the whole a vast, though not quite as large majority, also attested to these as working well. Overall 82% of nationally based interviewees, 77% of EU financial interest specialist and 80% of trans-national crime specialists at the national level attested to these as working well. Only a minority, though especially amongst EU financial interest specialist (where this applied to 37% of interviewees) attested to having dealt with relevant cases and not informing the relevant institution. The reason for not doing so also included the ability to deal with simple cases without supra-national assistance – in fact 26 interviewees 19.7% (8 of whom are financial interests experts) state that they only contact institutions when it is necessary. If they can gain the information etc. needed personally or through their own direct contacts, they will do so. In general the nationally based interviewees appeared comfortable with using EU institutions and mechanisms as well as knowledgeable about them (indicating that the study interviewee group may well be different to the one supra-national interviewees deal with). They also appear to achieve a level of expertise allowing them to deal (from their perspective) satisfactorily with their cases entirely independently. A not insignificant minority mention these institutions and mechanisms as being too time-consuming to deal with, especially in relation to EU financial interest related crimes.

These findings find an echo in the Luxemburg report which states that prosecutors there assess cases according to their geographical scope and the necessary co-operation involved. More innovative co-operative measures like joint investigation teams are reserved for very serious crime areas (in that case terrorism cases) whilst e.g. coordination meetings at Eurojust are only used for complex cases. The “simpler and more frequent inter-regional cases the national prosecutors deal with” are stated not to necessitate such mechanisms.¹³

National Prosecutors - overall

B 7 (c) Have these mechanism improved interviewee's access to evidence and suspects from other MS?		
Answer	Count	Percentage
No (1)	13	9.85%

¹³ Braum, p. 5-6. As mentioned above the Luxemburg report includes clear expression of prosecutor dissatisfaction with the pace of work at Eurojust expressing strong preference for the EJM – see op cit p. 13.

Yes (2)	119	90.15%
No answer	0	0.00%

B 7 (d) Are these working well?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	15	11.36%
Yes: Comment (2)	108	81.82%

B 8 Has interviewee dealt with relevant cases in which interviewee chose not to contact an EU institution / use an EU mechanism even though it would have been available?		
Answer	Count	Percentage
Yes (Y)	43	32.58%
No (N)	89	67.42%
No answer	0	0.00%

B 8 (a) If yes, why, and in what proportion of cases?		
Answer	Count	Percentage
Did not know of the mechanism's / agency's existence (1)	3	2.27%
National system does not encourage one to do so (2)	3	2.27%
The European institution / mechanism is too complex (3)	5	3.79%
The European institution / mechanism is too time-consuming (4)	13	9.85%
Don't feel comfortable using this mechanism (5)	1	0.76%
Other (please state) (6)	19	14.39%
<i>of which: not necessary</i>	9	
Prefer direct contacts	6	
No answer	88	66.67%

National Prosecutors - financial interests

B 7 (c) Have these mechanism improved interviewee's access to evidence and suspects from other MS?		
Answer	Count	Percentage
No (1)	3	8.57%
Yes (2)	32	91.43%

B 7 (d) Are these working well?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	7	20.00%
Yes: Comment (2)	27	77.14%

B 8 Has interviewee dealt with relevant cases in which interviewee chose not to contact an EU institution / use an EU mechanism even though it would have been available?		
Answer	Count	Percentage
Yes (Y)	13	37.14%
No (N)	22	62.86%

B 8 (a) If yes, why, and in what proportion of cases?		
Answer	Count	Percentage
Did not know of the mechanism's / agency's existence (1)	0	0.00%
National system does not encourage one to do so (2)	0	0.00%
The European institution / mechanism is too complex (3)	1	2.86%
The European institution / mechanism is too time-consuming (4)	5	14.29%
Don't feel comfortable using this mechanism (5)	1	2.86%
Other (please state) (6)	5	14.29%
<i>of which: due to bad experience in the past</i>	1	

<i>of which: for fear of disadvantage for own state if contact OLAF</i>	1	
No answer	23	65.71%

National Prosecutors - trans-national crime

B 7 (c) Have these mechanism improved interviewee's access to evidence and suspects from other MS?		
Answer	Count	Percentage
No (1)	8	12.50%
Yes (2)	56	87.50%
No answer	0	0.00%

B 7 (d) Are these working well?		
Answer	Count	Percentage
No: Explain briefly why not: (1)	5	7.81%
Yes: Comment (2)	51	79.69%

B 8 Has interviewee dealt with relevant cases in which interviewee chose not to contact an EU institution / use an EU mechanism even though it would have been available?		
Answer	Count	Percentage
Yes (Y)	23	35.94%
No (N)	41	64.06%

B 8 (a) If yes, why, and in what proportion of cases?		
Answer	Count	Percentage
Did not know of the mechanism's / agency's existence (1)	1	1.56%
National system does not encourage one to do so (2)	1	1.56%
The European institution / mechanism is too complex (3)	3	4.69%

The European institution / mechanism is too time-consuming (4)	6	9.38%
Don't feel comfortable using this mechanism (5)	0	0.00%
Other (please state) (6)	11	17.19%
No answer	42	65.63%

a) *Supra-national reflection*

This broadly positive evaluation is shared by supra-national interviewees with 83% overall rating their success in investigating cases as reasonable or better. Amongst EU financial interest specialist supra-national interviewees this rate is higher at 100% and thus in contradiction with the difference found at national level. Many supra-national interviewees choose to evaluate themselves “within the current set-up” which may explain this. Comments relating to the resources available to them were also similarly relativized with several supra-national interviewees answering yes “within the context of restricted resources.” Almost half supra-national interviewees overall, however, declared their investigative resources to be inadequate whilst only 36% of EU financial interest specialist supra-national interviewees did so and 50% of the latter declared them to be adequate.

Supra-national interviewees - overall

B12 How would you rate your success in investigating such cases?		
Answer	Count	Percentage
Very Good (1)	9	30.00%
Good (2)	7	23.33%
Reasonable (3)	9	30.00%
Weak (4)	1	3.33%
Very weak (5)	0	0.00%

B12b Are your resources to investigate adequate?		
Answer	Count	Percentage
Yes (Y)	12	40.00%
No (N)	14	46.67%
Don't know (D)	3	10.00%
No answer	1	3.33%

Supra-national interviewees - financial interests

B12 How would you rate your success in investigating such cases?		
Answer	Count	Percentage
Very Good (1)	2	14.29%
Good (2)	6	42.86%
Reasonable (3)	6	42.86%
Weak (4)	0	0.00%
Very weak (5)	0	0.00%

B12b Are your resources to investigate adequate?		
Answer	Count	Percentage
Yes (Y)	7	50.00%
No (N)	5	35.71%
Don't know (D)	2	14.29%
No answer	0	0.00%

Both national and supra-national interviewees would appear to indicate national practitioners and EU institutions as increasingly working together and increasingly satisfied with the service offered at the EU level. In other words this evaluative study represents a snapshot taken in a time of dynamic development; one which displays member states' authorities increasingly using EU institutions and mechanisms and, more often than not, satisfied with the few they use regularly or more frequently

A certain (perhaps natural) discrepancy can be seen in the differentially perceived need to involve supra-nationalised institutions. Practitioners in national criminal justice systems often declare they have many cases in which they do not need to involve them, whilst supra-national interviewees assert they are clearly not contacted in all cases to which this would be beneficial. Whilst it is not disputed that a certain proportion of cases are doubtlessly correctly regarded by national prosecutors as easily and independently dealt with by them, the supra-national interviewees' fear that the full dimension of cases and criminal phenomenon is consequently not consistently adequately recognised, is a deep cause for concern from the European criminal justice perspective. As is the fact that this greater dimension is either consequently or indeed deliberately excluded from prosecution (confirmed by 31 national interviewees and indicated to a certain extent by a further four whilst a further 16 report themselves as forced to act this way in certain cases due to a lack of (in two cases - timely) co-operation by other member states).

4. *Attitudes to current institutions*

Given that reform discussions have abounded (and are in part still underway) in relation to OLAF, Eurojust and Europol, nationally based interviewees were asked in closer detail about their attitudes to them. Contrary to the minority criticism outlines above, a large majority overall (76%) stated their major advantage to be saving them time whilst a smaller but still very clear majority (61%) regard them as saving them resources. The same reasons are noted by a clear (if somewhat smaller) majority of trans-national crime specialists (67 and 58% respectively) whilst the time factor is noted by a majority of EU financial interest specialists (77%), the resources factor by just less than half (49%). Interestingly almost one third of nationally based interviewees overall note an evidentiary standard securing function – stating that EU institutions ensure the evidence gathered abroad will be admissible – as do the same proportion of EU financial interest specialists (and 17% of trans-national crime specialists – in other words they obviously use them to counter some of the problems identified above) indicating that member state authorities regard the EU’s criminal justice related institutions as a varied toolbox.

Clearly, however, member state authorities do not feel the need to utilise these institutions in all cases. Overall 60% of those providing an answer (62% of EU financial interest specialists and 57% of trans-national crime specialists) contact them in all cases but 40% do not, including for the reason (expressed overtly by almost half of these interviewees – see supra) that they do not always need to involve them. The Luxemburg report also points to prosecutors being able to deal with simpler inter-regional cases best without any further help.¹⁴

National Prosecutors - overall

B 10 Do Eurojust, Europol and/or OLAF assist interviewee's work?		
Answer	Count	Percentage
No: they add to interviewee's case-load (1)	9	6.82%
No: they are of no relevance (2)	7	5.30%
No: other (please explain) (3)	5	3.79%
<i>of which</i> – no experience		3
<i>of which</i> – do not use Europol		1
<i>of which</i> – too time-consuming		1

¹⁴ Braum, p. 11

Yes: they save time (4)	101	76.51%
Yes: they save resources (5)	81	61.36%
Yes: they ensure that any evidence gathered will be admissible in interviewee's system (6)	38	28.79%
Yes: other (please state) (7)	23	17.42%
<i>of which</i> – create direct contacts		6
<i>of which</i> – ensure co-operation/pressure other member state		6
<i>of which</i> – co-ordinate		5
<i>of which</i> – provide information		2
<i>of which</i> – presence lends case credibility (OLAF)		2
Comments also include that add to case-load		3

B 10 (a) Does interviewee contact them in all relevant cases?		
Answer	Count	Percentage
Yes (Y)	61	46.21%
No (N)	40	30.30%
No answer	31	23.48%

B 10 (b) If not, why not?		
Answer	Count	Percentage
	53	40.15%
<i>of which</i> – because not necessary		32
<i>of which</i> – because more efficient not to		8
<i>of which</i> – have no right to do so		5
No answer	79	59.85%

National Prosecutors - financial interests

B 10 Do Eurojust, Europol and/or OLAF assist interviewee's work?		
Answer	Count	Percentage
No: they add to interviewee's case-load (1)	5	14.29%
No: they are of no relevance (2)	1	2.86%
No: other (please explain) (3)	1	2.86%
Yes: they save time (4)	28	80%
Yes: they save resources (5)	17	48.57%

Yes: they ensure that any evidence gathered will be admissible in interviewee's system (6)	10	28.57%
Yes: other (please state) (7)	4	11.43%
<i>of which</i> – create direct contacts		2
<i>of which</i> – ensure co-operation/pressure other member state		3
<i>of which</i> – co-ordinate		3
<i>of which</i> – provide information		0
<i>of which</i> – presence lends case credibility (OLAF)		2
Comments also include that add to case-load		2

B 10 (a) Does interviewee contact them in all relevant cases?		
Answer	Count	Percentage
Yes (Y)	15	42.86%
No (N)	9	25.71%
No answer	11	31.43%

B 10 (b) If not, why not?		
Answer	Count	Percentage
	23	65.71%
<i>of which</i> – because not necessary		18
<i>of which</i> – because more efficient not to		2
<i>of which</i> – have no right to do so		3
No answer	12	34.29%

National Prosecutors - trans-national crime

B 10 Do Eurojust, Europol and/or OLAF assist interviewee's work?		
Answer	Count	Percentage
No: they add to interviewee's case-load (1)	4	6.25%
No: they are of no relevance (2)	4	6.25%
No: other (please explain) (3)	4	6.25%
Yes: they save time (4)	43	67.19%
Yes: they save resources (5)	37	57.81%

Yes: they ensure that any evidence gathered will be admissible in interviewee's system (6)	11	17.19%
Yes: other (see above) (7)	9	14.06%

B 10 (a) Does interviewee contact them in all relevant cases?		
Answer	Count	Percentage
Yes (Y)	26	40.63%
No (N)	20	31.25%
No answer	18	28.13%

B 10 (b) If not, why not?		
Answer – see above	24	37.50%
No answer	40	62.50%

5. *Supra-national Evaluation of the current supra-nationalised system*

Given the nationally based interviewees clear expression of a preference for the use of the EAW and Eurojust, and in specialised areas the EJM and OLAF (see supra), as well as the advantages they associate with them (see previous section), supra-national interviewees were asked whether they estimate member state authorities as preferring certain types of mechanisms to facilitate their cases and as to what kinds of assistance national criminal justice practitioners turn to them for.

Overall supra-national interviewees see member state authorities as having clear preferences though they vary in their description as to what precisely these are: 23%¹⁵ state them as tending to prefer direct contact amongst the member state authorities or mechanisms which leave them in charge rather than transferring power to a supra-national level, the same proportion point to a preference of paths familiar to their national colleagues and which they have experienced as successful in the past – efficiency, freedom from bureaucracy, not challenging the national prosecutors' authority and efficiency are also criteria mentioned.

¹⁵ incorporating two further comments

The requests directed to supra-national interviewees are most frequently for legal expertise, practical intervention, advice, co-ordinated action and acceleration of mutual legal assistance requests. Interestingly there was no general agreement amongst supra-national interviewees as to what is working particularly well in co-operation with the member states just as there is great variety in their opinions as to what could be improved and how. Above all they appear to view themselves as working well in connecting professionals and facilitating co-operation.

Supra-national interviewees - overall

B21 Do you estimate the MS authorities in preferring certain types of co-operative mechanisms?		
Answer	Count	Percentage
Yes - direct contact (Y1)	5	16.67%
Yes - co-ordinated action (Y2)	0	0.00%
Yes - Other (Y3)	17	56.67%
<i>of which: familiar (used before)</i>		6
<i>of which: familiar (in sense of language/equal)</i>		4
<i>of which: successful before</i>		2
<i>of which: unbureaucratic</i>		2
<i>of which: not challenging user authority</i>		2
No (N)	4	13.33%
Don't know (D)	4	13.33%
No answer	0	0.00%

B22 If they contact you, what do they usually request: e.g. legal expertise, advice, practical intervention?		
Answer	Count	Percentage
Legal expertise (1)	16	53.33%
Advice (2)	14	46.67%
Practical intervention (3)	15	50.00%
Acceleration of MLA (5)	11	36.66%
Co-ordination meeting (6)	5	16.67%
Co-ordinated action (7)	11	36.67%
Other (4)	15	50.00%

B24 What do you estimate as working well in co-operation with the member states?		
Answer	Count	Percentage
Direct contact (1)	6	20.00%
Co-ordination meetings (2)	1	3.33%
Co-operation once we become involved (3)	0	0.00%
Information exchange (4)	0	0.00%
Other (5)	26	86.67%

B24a What could be improved?		
Answer	Count	Percentage
Language capacities (1)	2	6.67%
Awareness of EU institution (2)	5	16.67%
Awareness of service EU institution can offer (3)	6	20.00%
Willingness to use EU institutions (4)	7	23.33%
Willingness to co-operate (5)	2	6.67%
Speed of reaction (6)	1	3.33%
Legal framework (7)	6	20.00%
Everything (8)	6	20.00%
Other (9)	16	53.33%

B24b How?		
Answer	26	86.67%
<i>of which:</i> legislative reform	7	<i>harmonisation (theory) 5 national legislation 2</i>
<i>of which:</i> Investigate at EU level		4
<i>of which:</i> Bring cases at EU level		4
<i>of which:</i> Better use of existing tools		4
<i>of which:</i> Simplification		3
<i>of which:</i> Training		3
<i>of which:</i> Closer co-operation with member states		3
<i>of which:</i> Policy setting at EU-level		1
No answer	4	13.33%

Supra-national interviewees - financial interests

B21 Do you estimate the MS authorities in preferring certain types of co-operative mechanisms?		
Answer	Count	Percentage
Yes - direct contact (Y1)	5	35.71%
Yes - co-ordinated action (Y2)	0	0.00%
Yes - Other (Y3)	8	57.14%
<i>of which: familiar (used before)</i>		3
<i>of which: familiar (in sense of language/equal)</i>		3
<i>of which: successful before</i>		0
<i>of which: unbureaucratic</i>		1
<i>of which: not challenging user authority</i>		1
No (N)	1	7.14%
Don't know (D)	0	0.00%
No answer	0	0.00%

B22 If they contact you, what do they usually request: e.g. legal expertise, advice, practical intervention?		
Answer	Count	Percentage
Legal expertise (1)	9	64.29%
Advice (2)	6	42.86%
Practical intervention (3)	7	50.00%
Acceleration of MLA (5)	3	21.43%
Co-ordination meeting (6)	3	21.43%
Co-ordinated action (7)	5	35.71%
Other (4)	6	42.86%

B24 What do you estimate as working well in co-operation with the member states?		
Answer	Count	Percentage
Direct contact (1)	4	28.57%
Co-ordination meetings (2)	0	0.00%
Co-operation once we become involved (3)	0	0.00%
Information exchange (4)	0	0.00%
Other (5)	12	85.71%

B24a What could be improved?		
Answer	Count	Percentage
Language capacities (1)	1	7.14%
Awareness of EU institution (2)	2	14.29%
Awareness of service EU institution can offer (3)	2	14.29%
Willingness to use EU institutions (4)	3	21.43%
Willingness to co-operate (5)	1	7.14%
Speed of reaction (6)	0	0.00%
Legal framework (7)	4	28.57%
Everything (8)	4	28.57%
Other (9)	7	50.00%

B24b How?		
Answer	13	92.86%
<i>of which:</i> legislative reform	3	<i>harmonisation (theory) 3</i>
<i>of which:</i> Investigate at EU level		4
<i>of which:</i> Bring cases at EU level		4
<i>of which:</i> Better use of existing tools		1
<i>of which:</i> Simplification		1
<i>of which:</i> Training		1
<i>of which:</i> Closer co-operation with member states		1
<i>of which:</i> Policy setting at EU-level		1
No answer	1	7.14%

The current set-up sees supra-nationalised institutions increasingly used by national prosecutors for service and assistance as they deem them to be necessary. Supra-national interviewees often emphasise their increasing activity as a product of „outreach“ efforts they have made to prove themselves useful and non-threatening to their national colleagues. As they gain trust, a minority are also reporting „own initiative“ efforts alongside these kinds of activity.

Supra-national interviewees, backed up by a large number of national interviewees, testify to deficits in recognition of and the treatment of European cases however. Thus they provide clear indication that the current set-up leaves gaps in the law-enforcement and especially prosecution set-up.

The study clearly shows practitioners working at national and supra-national levels increasingly interacting with one another. The results, however, also display national criminal justice professionals as preferring and using mechanism which leave them in charge of the process. The status quo is quite plainly that the prosecution of European cases is largely dependent upon the will, skill and action of national criminal justice practitioners.

Not denying the politically sensitive nature of this topic due to the broader issues attached, it is submitted that practitioners appear to recognise hard, factually based arguments which speak for a shift in this area if European cases are to be prosecuted more satisfactorily and comprehensively.

This could potentially be achieved organically via the path apparently adopted currently by many supra-national interviewees; gaining the trust of former colleagues in the member states for their new role and then using their additional perspective to suggestion action (often informally) to their colleagues in national criminal justice systems. If this path is chosen, it must be clear that law enforcement gap is accepted for the foreseeable future even for the serious offences discussed here (a matter apparently, at least theoretically viewed as unacceptable by the member states given recent Council decisions to enhance Europol and Eurojust's respective role). Furthermore it entrusts investigation and prosecution to national systems currently facing considerable resource barriers, if not walls.

This problem would appear particularly acute for EU's financial interests offences. National and supra-national interviewees have clearly identified a strong need for criminal justice professionals identifying with such cases, able to recognise and initiate their investigation as well as to ensure their full prosecution – even if they do not necessarily like the idea of the existence of this kind of figure.

D. Ensuring evidence admissibility/procedural standards

1. National Interviewee role in securing procedural standards

As seen above, nationally based interviewees to a lesser but significant extent, regard EU criminal justice related institutions as a means to ensuring evidence ad-

missibility in that procedural standards are adhered to. They were questioned which steps they themselves undertook to ensure this in European cases.

Overall a small majority (52%) claimed to take steps to ensure procedural safeguards and defence rights are fully attended to abroad in cases in which they requests coercive measures. This was higher for EU financial interest specialist and trans-national crime specialists (54 and 59% respectively). Some interviewees qualified their answer saying they did so in as far as it is in their power to do so which means detailing requirements in their request. Overall the attention paid to ensure procedural safeguards and defence rights is much higher in cases nationally based interviewees carry out at the request of other member states with 88, 83 and 89% stating that they ensure these are adhered to. A clear majority (64, 71 and 64% respectively) attest to paying specific attention to the standards of the requesting state. These answers are sometimes (by 15 interviewees – 12.9% of those who respond in the affirmative to this question) qualified by a statement “in so far as I am informed of them” or “in as far as these are compatible with our legal order.”

It may well be that nationally based interviewees expressed desire to become involved in evidence gathering directly stems in part from a desire to secure procedural safeguards and defence rights but all in all they appear fairly trusting in their foreign colleagues.

National Prosecutors - overall

B 18 Does interviewee ensure that procedural safeguards and defence rights are fully attended to abroad in cases in which interviewee requests coercive measures?		
Answer	Count	Percentage
No (1)	63	47.73%
Yes (2)	69	52.27%
No answer	0	0.00%

B 19 Where interviewee carries out a request for another MS, does interviewee ensure that procedural safeguards and defence rights are fully attended to?		
Answer	Count	Percentage
No (1)	16	12.12%
Yes (2)	116	87.88%
No answer	0	0.00%

B 19 (a) Does interviewee pay any attention to the standards / rules of the requesting state?		
Answer	Count	Percentage
No (1)	24	18.18%
Yes (2)	84	63.64%
No answer	24	18.18%

B 15 Would interviewee prefer to become directly involved in collecting evidence in another member state where interviewee makes a request? Why? / Why not?		
Answer	Count	Percentage
No (1)	31	23.48%
Yes (2)	87	65.91%
No answer	14	10.61%

National Prosecutors - financial interests

B 15 Would interviewee prefer to become directly involved in collecting evidence in another member state where interviewee makes a request? Why? / Why not?		
Answer	Count	Percentage
No (1)	2	5.71%
Yes (2)	28	80.00%
No answer	5	14.29%

B 18 Does interviewee ensure that procedural safeguards and defence rights are fully attended to abroad in cases in which interviewee requests coercive measures?		
Answer	Count	Percentage
No (1)	16	45.71%
Yes (2)	19	54.29%

B 19 Where interviewee carries out a request for another MS, does interviewee ensure that procedural safeguards and defence rights are fully attended to?		
Answer	Count	Percentage
No (1)	6	17.14%
Yes (2)	29	82.86%

B 19 (a) Does interviewee pay any attention to the standards / rules of the requesting state?		
Answer	Count	Percentage
No (1)	3	8.57%
Yes (2)	25	71.43%
No answer	7	20.00%

National Prosecutors - trans-national crime

B 15 Would interviewee prefer to become directly involved in collecting evidence in another member state where interviewee makes a request? Why? / Why not?		
Answer	Count	Percentage
No (1)	18	28.13%
Yes (2)	38	59.38%
No answer	8	12.50%

B 18 Does interviewee ensure that procedural safeguards and defence rights are fully attended to abroad in cases in which interviewee requests coercive measures?		
Answer	Count	Percentage
No (1)	26	40.63%
Yes (2)	38	59.38%

B 19 Where interviewee carries out a request for another MS, does interviewee ensure that procedural safeguards and defence rights are fully attended to?		
Answer	Count	Percentage
No (1)	7	10.94%
Yes (2)	57	89.06%

B 19 (a) Does interviewee pay any attention to the standards / rules of the requesting state?		
Answer	Count	Percentage
No (1)	10	15.63%
Yes (2)	41	64.06%
No answer	13	20.31%

2. *Defence Lawyers*

The survey of national defence lawyers displays a fairly compatible opinion on their part to the above prosecutorial answers. A small majority believe procedural safeguards and defence rights to be fully attended to when other states fulfil requests made by the defence lawyers' prosecutorial colleagues whilst a large minority believe this is not the case. These proportions are similar to those of prosecutors to make efforts, or not, to ensure that these rights and safeguards are adhered to.

A somewhat larger minority of defence lawyers than prosecutors attests that procedural safeguards and defence rights are not fully attended to when their own domestic prosecutors are carrying out requests for another member state. A far smaller majority attest with certainty to this being the case though the greater part of that differential is explained by the defence lawyers who feel unable to provide evaluation of this matter.

Interestingly an almost twice as large a minority attest to having no knowledge of "their own" prosecutors as not paying attention to the standards and rules of the requesting state. In a similar pattern to that, however, round about half the proportion of defence lawyers (compared to that of the prosecutorial interviewees) affirm that prosecutors do pay attention to such differences but the majority of that differential is accounted for by defence lawyers who fail to provide any answer at all.

B 3 Does interviewee think that procedural safeguards and defence rights are fully attended to abroad in cases in which coercive measures are requested by interviewee's national system?		
Answer	Count	Percentage
No (1)	25	44.64%
Yes (2)	31	55.36%
No answer	0	0.00%

B 4 Where a request is carried out for another MS by his/her own domestic criminal justice institutions, does interviewee think that procedural safeguards and defence rights are fully attended to?		
Answer	Count	Percentage
No (1)	13	23.21%
Yes (2)	34	60.71%
No answer	9	16.07%

B 5 Has interviewee experienced specific attention being paid to the standards / rules of the requesting state?		
Answer	Count	Percentage
No (1)	20	35.71%
Yes (2)	19	33.93%
No answer	17	30.36%

Interestingly approximately the same proportion of defence interviewees believe procedural and defence rights are not fully attended to abroad as national prosecutorial interviewees report not ensuring adherence to them when making requests abroad. This certainly indicates good grounds for the criticism surrounding this lacuna and the continued need for efforts in this area in relation to trans-national cases.

E. Biases against member state prosecution of such cases?

As shown above, supra-national interviewees identify serious challenges¹⁶ to the effective handling of European – especially EU financial interest related cases, by member state criminal justice systems. In the following section, national prosecutor opinions on this topic are explored.

¹⁶ Priority setting, reduction of prosecutions and the lack of resources.

1. *Structural Problems*

Nationally based interviewees were also questioned as to whether their systems inherently contain features making them less suitable for investigating and prosecuting European cases. Overall a clear majority (64%) answered that this is not the case though the remaining 34% explicitly stated that their systems do. This explicit declaration that their system contains disincentives was made by 40% of EU financial interest specialists and 32% of trans-national crime specialists. A clear majority see resources devoted to them equally in comparison to national cases overall (58% with 30% pointing out that resources are restricted but in an equivalent way). Amongst EU financial interest specialists there is no majority claiming inequality of treatment with 46% saying that European cases suffer from the same resource shortage as national cases, 40% saying resources are adequate and equally assigned and a smaller proportion claiming resources are not evenly distributed. A clearer majority of trans-national crime specialists view resources as adequately and equally available (59%) though 30% point to shortages. Overall a majority (63%, 89% of EU financial interest specialists and only 53% of trans-national crime specialists) of nationally based interviewees report their systems as foreseeing the same diversionary measures for European as for national cases. 68% regard performance indicators as treating European cases identically to national ones (65% of EU financial interest specialists and 64% of trans-national crime specialists). The other 37% (11% and 47%) and 32% (34% and 35%) respectively, however, are adamant in their negation of equivalence.

Overall only 9% (3% and 14% of the specialist interviewees) have experienced a case ending because a deal has been made (between prosecution and defence) in another jurisdiction. The higher rate for trans-national (and not unlikely organised) crime might be taken as cause for concern though it can, of course, just as easily be the product of super-grass deals (or other controversial but “useful” arrangements) being made.

Nationally based interviewees majority estimation that member states’ systems are not biased against the investigation and prosecution of European crimes is in line with similar results gleaned from supra-national interviewees (see supra).

National Prosecutors - overall

B 5(b) Are there disincentives for bringing such cases?		
Answer	Count	Percentage
No (1)	84	63.64%

Yes (2)	48	36.36%
No answer	0	0.00%

B 5(c) Are resources devoted to them equally as to national cases?		
Answer	Count	Percentage
No; diversionary mechanisms are used more often for cases involving supra-national victimisation (1)	10	7.58%
No; supra-national cases are dropped more often (2)	5	3.79%
No; other (please explain) (3)	18	13.64%
Yes; adequate and equal resources available (4)	77	58.33%
Yes; treated equally, but resources are sometimes restricted (5)	40	30.30%
If so, please specify the criteria by which resources are restricted (6)	24	18.18%

B 5(d) Does interviewee's system foresee different diversionary measures for such cases both national and of supra-national relevance?		
Answer	Count	Percentage
Yes (1)	49	37.12%
No (2)	83	62.88%
No answer	0	0.00%

B 5(e) Do internal performance indicators treat work on European cases identically to national cases (in consideration of the additional effort they require)?		
Answer	Count	Percentage
No (1)	42	31.82%
Yes (2)	90	68.18%
No answer	0	0.00%

B 5(f) Has interviewee ever experienced a case ending because a "deal" has been made with the defendant in another jurisdiction?		
Answer	Count	Percentage
No (1)	120	90.91%

Yes (2)	12	9.09%
No answer	0	0.00%

B 5(f)(i) If so, was interviewee consulted?		
Answer	Count	Percentage
No (1)	13	9.85%
Yes (2)	8	6.06%
No answer	111	84.09%

National Prosecutors - financial interests

B 5(b) Are there disincentives for bringing such cases?		
Answer	Count	Percentage
No (1)	21	60.00%
Yes (2)	14	40.00%
No answer	0	0.00%

B 5(c) Are resources devoted to them equally as to national cases?		
Answer	Count	Percentage
No; diversionary mechanisms are used more often for cases involving supra-national victimisation (1)	2	5.71%
No; supra-national cases are dropped more often (2)	2	5.71%
No; other (please explain) (3)	7	20.00%
Yes; adequate and equal resources available (4)	14	40.00%
Yes; treated equally, but resources are sometimes restricted (5)	16	45.71%
If so, please specify the criteria by which resources are restricted (6)	9	25.71%

B 5(d) Does interviewee's system foresee different diversionary measures for such cases both national and of supra-national relevance		
Answer	Count	Percentage

Yes (1)	4	11.43%
No (2)	31	88.57%
B 5(e) Do internal performance indicators treat work on European cases identically to national cases?		
Answer	Count	Percentage
No (1)	12	34.29%
Yes (2)	23	65.71%

B 5(f) Has interviewee ever experienced a case ending because a "deal" has been made with the defendant in another jurisdiction?		
Answer	Count	Percentage
No (1)	34	97.14%
Yes (2)	1	2.86%

B 5(f)(i) If so, was interviewee consulted?		
Answer	Count	Percentage
No (1)	0	0.00%
Yes (2)	1	2.86%
No answer	34	97.14%

National Prosecutors - trans-national crime

B 5(b) Are there disincentives for bringing such cases?		
Answer	Count	Percentage
No (1)	43	67.19%
Yes (2)	21	32.81%

B 5(c) Are resources devoted to them equally as to national cases?		
Answer	Count	Percentage
No; diversionary mechanisms are used more often for cases involving supra-national victimisation (1)	4	6.25%

No; supra-national cases are dropped more often (2)	1	1.56%
No; other (please explain) (3)	8	12.50%
Yes; adequate and equal resources available (4)	38	59.38%
Yes; treated equally, but resources are sometimes restricted (5)	19	29.69%
If so, please specify the criteria by which resources are restricted (6)	13	20.31%

B 5(d) Does interviewee's system foresee different diversionary measures for such cases both national and of supra-national relevance?

Answer	Count	Percentage
Yes (1)	30	46.88%
No (2)	34	53.13%

B 5(e) Do internal performance indicators treat work on European cases identically to national cases (in consideration of the additional effort they require)?

Answer	Count	Percentage
No (1)	23	35.94%
Yes (2)	41	64.06%

B 5(f) Has interviewee ever experienced a case ending because a "deal" has been made with the defendant in another jurisdiction?

Answer	Count	Percentage
No (1)	55	85.94%
Yes (2)	9	14.06%

B 5(f)(i) If so, was interviewee consulted?

Answer	Count	Percentage
No (1)	5	7.81%
Yes (2)	6	9.38%

No answer	53	82.81%
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Not surprisingly the picture painted of national criminal justice systems is one of resource shortages in which difficult decisions are being made. The majority of national prosecutor interviewees – supported by comments of their supra-national counterparts, are that European cases are subject to the same shortages, where they occur. There is strong indication, however, by a large minority that the current set-up is biased against the prosecution of European cases.

A fundamental decision is thus faced: whether such a bias is acceptable and if not, how a rebalancing could be organised. It is difficult to imagine the latter occurring within the current set-up. After all, national prosecutors are likely making rational decisions.

In tackling organised crime phenomena their comments indicate them choosing to invest their time as effectively as possible; not undertaking additional effort to prosecute comprehensively for example, if an acceptable solution can be achieved otherwise. This is a perfectly rational decision from the national perspective only bearing the risk pointed out by supra-national interviewees that the bigger picture is missed. National interviewees are (at least in part) clearly aware of this danger, several commenting that they ensure they do not merely achieve displacement or negative effects for neighbouring countries, nevertheless supra-national interviewees assert that national interviewees are rarely in a position to recognise a situation fully. Clearly this finding calls for a continuation of the moves currently underway to ensure Europol intelligence and Eurojust knowledge is successfully and comprehensively dovetailed with member states activity.

Relating to crimes against the EU financial interests where the bias may be slightly stronger, this is a call for an effective injection of resources and motivation into this field. A few interviewees floated the idea of ensuring member states' criminal justice systems profit from monies recovered by increased enforcement to provide motivation for change. As we shall see, however, a majority see greater potential in further institutional development.

F. The Defence

The study concept views a functioning defence as an integral part of any criminal justice system and thus evaluated the functioning of defence lawyers within European cases alongside that of prosecutors.

1. *Prosecutor Perception*

On the whole, prosecutors do not appear concerned in relation to their defence colleagues though a significant minority (32%) were in part emphatic that the principle of mutual recognition and measures based upon it pose problems for the defence. The largest minority of national interviewees have not faced problems related to this but significant minorities have faced an argument of disadvantage at trial (16%), recognised a more theoretical deficit (11%) and even noticed that their cases are easier to deal with (9%). These rates are generally slightly higher for EU financial interests specialists except the proportion having experienced procedures as easier to handle, which is much lower (3%) for this group. Trans-national specialist interviewees have values very close to those overall.

Although they were reticent in affirming the defence as having problems, a majority (and thus a group almost twice the size of that acknowledging defence problems) of national prosecutors were nevertheless happy to discuss possible developments to support the defence and solve any problems they might have. Above all (49%) they stated overall that defence lawyers' work would be simplified by an approximation of law. A quarter of national interviewees said the establishment of a European defence network was desirable whilst a minority of 19% supported supervision of coercive measures abroad by a prosecutor. As is apparent from the statistics prosecutors regard the approximation of law as far more promising than any other proposal.

EU financial interests specialists are more strongly in favour of all of the proposed solutions than national interviewees overall and, interestingly, much more in favour of prosecutorial supervision of coercive measures abroad to the extent that this trumps the establishment of a defence network. Their preferred solution is in line with these statistics. Trans-national specialist interviewees are much less enthusiastic about any of the proposed changes although a large minority (48%) see the approximation of law as desirable. A majority of these interviewees did not provide an answer for this question given that they do not view the defence situation as requiring any solution.

National Prosecutors - overall

B 21 Do mutual recognition cases cause problems for the defence?		
Answer	Count	Percentage
No (1)	66	50.00%

Yes (2)	42	31.82%
No answer	24	18.18%

B 21 (a) Interviewee has:		
Answer	Count	Percentage
not progressed with an investigation because of this? (1)	3	2.27%
faced an argument relating to mutual recognition at trial? (2)	21	15.91%
seen a case end other than you would normally expect because of this? (3)	5	3.79%
experienced other negative consequences because of this? (4)	5	3.79%
recognised that procedures you are dealing with are easier to handle? (5)	12	9.09%
simply recognised a (more theoretical) deficit? (6)	15	11.36%
other, please name: (7)	10	7.58%
not experienced problems with mutual recognition (8)	46	34.85%

B 22 Which of the following does the interviewee regard a possible solution?		
Answer	Count	Percentage
a prosecutor supervised the coercive measures in the other MS in accordance to agreed criterion (1)	25	18.94%
the measure undertaken was permitted by a supra-national chamber prior to its use (2)	5	3.79%
a European defence network were in place (3)	33	25.00%
a supra-national defence instance were in place (NB structure could be entire centralised or of a European Defence Office with a deputy in each MS) (4)	11	8.33%
law is approximated (5)	64	48.48%
Other (please provide details): (6)	21	15.91%
These comments are very diverse, mostly to the effect that no change is necessary, some apportion difficulties to differences in language or procedure which it is		

difficult to do anything about. There are two references to the principle of proportionality being regulated for such cases but more to the notion that the system and prosecutors within it should be trusted to ensure defendants are treated fairly. One comment points out that none of these measures would satisfy a British court as to the security of a procedure respective to defence and procedural rights.

B 22 (a) Which solution would interviewee prefer and why?

Answer	80	60.61%
No answer	52	39.39%

National Prosecutors - financial interests

B 21 Do mutual recognition cases cause problems for the defence?

Answer	Count	Percentage
No (1)	15	42.86%
Yes (2)	12	34.29%
No answer	8	22.86%

B 21 (a) Interviewee has:

Answer	Count	Percentage
not progressed with an investigation because of this? (1)	1	2.86%
faced an argument relating to mutual recognition at trial? (2)	6	17.14%
seen a case end other than you would normally expect because of this? (3)	1	2.86%
experienced other negative consequences because of this? (4)	1	2.86%
recognised that procedures you are dealing with are easier to handle? (5)	1	2.86%
simply recognised a (more theoretical) deficit? (6)	4	11.43%
other, please name: (7)	2	5.71%
not experienced problems with mutual recognition (8)	16	45.71%

B 22 Which of the following does the interviewee regard a possible solution?		
Answer	Count	Percentage
a prosecutor supervised the coercive measures in the other MS in accordance to agreed criterion (1)	13	37.14%
the measure undertaken was permitted by a supra-national chamber prior to its use (2)	4	11.43%
a European defence network were in place (3)	10	28.57%
a supra-national defence instance were in place (NB structure could be entire centralised or of a European Defence Office with a deputy in each MS) (4)	5	14.29%
law is approximated (5)	19	54.29%
Other (please provide details): (6)	3	8.57%

B 22 (a) Which solution would interviewee prefer and why?		
Answer	20	57.14%
No answer	15	42.86%

National Prosecutors - trans-national crime

B 21 Do mutual recognition cases cause problems for the defence?		
Answer	Count	Percentage
No (1)	31	48.44%
Yes (2)	20	31.25%
No answer	13	20.31%

B 21 (a) Interviewee has:		
Answer	Count	Percentage
not progressed with an investigation because of this? (1)	1	1.56%
faced an argument relating to mutual recognition at trial? (2)	7	10.94%

seen a case end other than you would normally expect because of this? (3)	3	4.69%
experienced other negative consequences because of this? (4)	2	3.13%
recognised that procedures you are dealing with are easier to handle? (5)	6	9.38%
simply recognised a (more theoretical) deficit? (6)	4	6.25%
other, please name: (7)	7	10.94%
not experienced problems with mutual recognition (8)	19	29.69%

B 22 Which of the following does the interviewee regard a possible solution?		
Answer	Count	Percentage
a prosecutor supervised the coercive measures in the other MS in accordance to agreed criterion (1)	7	10.94%
the measure undertaken was permitted by a supra-national chamber prior to its use (2)	1	1.56%
a European defence network were in place (3)	13	20.31%
a supra-national defence instance were in place (NB structure could be entire centralised or of a European Defence Office with a deputy in each MS) (4)	3	4.69%
law is approximated (5)	31	48.44%
Other (please provide details): (6)	10	15.63%

B 22 (a) Which solution would interviewee prefer and why?		
Answer	38	59.38%
No answer	26	40.63%

2. *Defence Lawyers' Perspective*

Though defence lawyers were questioned more generally, mutual recognition instruments formed the heart of their answers. Not entirely surprisingly their opinions were somewhat different to those of their prosecutorial counterparts with 63% stat-

ing that they are in a disadvantaged position in European cases in comparison to those involving national criminal justice institutions.

Of the 35 who considered themselves disadvantaged: 54.3% identified considerable logistical obstacles, 28.6% see the defence as in a disadvantaged legal position, 28.6% as suffering from a lack of transparency or proceedings and cases. 25.7% identified the defence's inability to counter or accompany measures taken abroad as causal to their disadvantaged position. 11.4% describe the disadvantage as stemming from the defence's dependence upon state bodies to gain information or carry out acts in such cases. 8.6% described the knowledge of the judiciary or judicial officers as inadequate, leaving them disadvantaged (they criticise for example that judges do not know and are thus unwilling to consider all sources of law such as the European Convention on Human Rights or that knowledge of the international legal framework is inadequate); presumably meaning that their arguments are (incorrectly in their opinion) rejected as unfounded. 5.7% point to a lack of organised training of defence lawyers in contrast to the state employees they face and the same proportion of respondents point to defence lawyers' lack of knowledge as to which assistance structures are in place as a factor in causing the defence to be at a disadvantage in European cases.

The Luxemburg report displays a number of legal and structural constellation which leave the defence particularly disadvantaged in European cases.¹⁷

B 2 Was interviewee in a disadvantaged position compared to cases involving national criminal justice system institutions only?		
Answer	Count	Percentage
No (1)	21	37.50%
Yes - please briefly explain why (2)	35	62.50%
No answer	0	0.00%

Interestingly only a third of interviewees, so approximately half of those who stated the defence to be at a disadvantage, had chosen to bring this argument before court. The reasons for this became clear from the comments made; only 3 of the 18 respondents who had made such an argument at trial attested to it having had some effect, 2 explicitly said it never did, whilst most interviewees demonstrated a clear lack of faith that such argument stood any chance - best described as disillusionment.

¹⁷ See Braum p. 17 et seq.

B 2(a) Has interviewee presented this as an argument at trial / during case settlement discussions? Did it have any effect?		
Answer	Count	Percentage
No (1)	38	67.86%
Yes (2)	18	32.14%
No answer	0	0.00%

Not surprisingly the defence lawyer interviewees entertained lively discussions as to how the situation could be improved. It is striking that a considerably greater proportion of defence lawyers regard prosecutorial supervision of proceedings as a viable solution compared to their prosecutorial colleagues. It should be noted that the level of disillusionment was so great among the majority of defence lawyer interviewees, that a kind of “anything is an improvement” attitude was apparent. Thus none of these results can necessarily be taken as indication of excitement or optimism regarding the proposed solution but to a certain degree must be regarded as a statement of how negatively defence lawyers view the status quo.

B2(b) Would this issue be resolved			
Answer	Count	Percentage	<i>Percentage of prosecutorial interviewees</i>
a) if a prosecutor supervised the coercive measures in the other MS in accordance to agreed criterion? (1)	18	32.14%	18.94%
b) the measure undertaken was permitted by a supra-national chamber prior to its use? (2)	19	33.93%	3.79%
c) if a European defence network were in place? (3)	31	55.36%	25.00%
d) if a supra-national defence instance were in place (NB: structure could be entire centralised or of a European Defence Office with a deputy in each MS)? (4)	14	25.00%	8.33%
e) by an approximation of law? (5)	35	62.5%	48.48%
Other	8	14.28%	15.91%

In agreement with their prosecutorial counterparts, the largest proportion of defence lawyer interviewees state that the situation could be resolved by an approximation of law. Interestingly a clear majority of defence lawyers (unlike prosecutors) view this as a solution in many cases this observation is, however, accompanied by a comment that approximation must be to an appropriate level. As was the case amongst their prosecutor colleagues, defence lawyers rank a European defence network as the second best solution only here it is a majority of respondents who regard this as resolution (in comparison to only 25% of prosecutors interviewed). Unlike their prosecutorial equivalents, defence lawyer interviewees prefer court supervision to that of a prosecutor but a fairly large minority regard both of these as potential solutions. They are also less convinced of the ability of a European defence office to improve their lot (and indeed have more faith in the courts to do so than such an institution – unlike their prosecutorial colleagues who presumably see a court procedure as a potentially very serious hindrance to their work – often rejecting it with comments relating to practical reasons). The “other” answers include two interviewees calling for improved practice and improved domestic safeguards respectively whilst one interviewee thought a defence lawyers experience discussion forum, another the facilitation of proactive defence activity would be a good solution. Most interviewees expressed a need for more than one of these options stating that a combination of measures is necessary.

This is the approach also recommended by the defence lawyers interviewed in Luxemburg. This report describes a number of legislative steps, national and European which defence practitioners there view as necessary to rebalancing the position of the defence in European cases. Centrally an urgent need to address the rights deficit at European level is seen. A European defence network is further recommended to enable defence lawyers to work effectively in European cases.¹⁸

Part III Potential Solutions

Although the majority of national interviewees tend to think their systems enable them to deal with European cases and that they are dealing with them well, within the limitations their systems face, there are clear indications stemming from them as well as (strong ones from) their supra-national colleagues, that the handling of European cases presents a number of challenges and the current set-up could be

¹⁸ See Braum, p. 23 et seq.

improved. Thus a variety of potential solutions and improvements were discussed with all interviewees. They were further all given an opportunity to make comments and suggestions independent of those developed by the study within the questionnaire.

A. Making better use of existing mechanisms

The simplest suggestion emerged from supra-national interviewees, the majority of whom overall commented that member state authorities have all the necessary tools to investigate and prosecute European cases. A frequently added comment (noted by 10 – 33%) was: “if only they would use them appropriately”. A significant minority of 33% overall negated this statement, i.e. asserted that further tools are required.

This situation is different in relation to EU financial interests specialists according to the relevant supra-national interviewees of whom 50% declare their national colleagues of requiring further tools to deal with the relevant European cases. Nevertheless 43% regard these as complete and one third of interviewees comment that full use of those currently available would go a long way.

Supra-national interviewees - overall

B23 Do you anticipate the tools national authorities have to be adequate to deal with (investigate and prosecute) such cases?		
Answer	Count	Percentage
Yes (Y)	17	56.67%
No (N)	10	33.33%
Don't know (D)	3	10.00%
No answer	0	0.00%

Supra-national interviewees - financial interests..

B23 Do you anticipate the tools national authorities have to be adequate to deal with (investigate and prosecute) such cases?		
Answer	Count	Percentage
Yes (Y)	6	42.86%
No (N)	7	50.00%
Don't know (D)	1	7.14%

No answer	0	0.00%
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There is significant argument – stronger in relation to EU financial interest related offences; stemming from practitioners working in supra-nationalised contexts, that further institutional development is required.

B. Further Institutional Development

Centrally interviewees were questioned as to whether further development of European tools is necessary.

1. General national opinion

National interviewees are markedly more conservative across the board than their supra-national colleagues. Overall and among EU financial interests specialists 26% of national interviewees declared further mechanisms or agencies to be necessary, amongst trans-national specialist interviewees this was 25%. A clear majority (of 62%, 57% and 59% respectively) explicitly negated any such need.

It should be stated, however, that 28 (or 21% of the sample overall and 34.1% of those answering this question with no), went on to qualify their statement. Having stated that no further mechanism is necessary, they nevertheless explained that the situation could be improved by an EPP, the centralisation of information and evidence and/or a central EU service to apply to for all evidence from coercive measures in all 27 member states. In other words a slim majority of 54% stated that the situation would be improved by further institutional development.

The three prosecutors interviewed in Luxemburg are clearly highly sceptical concerning any development towards an EPP so this majority can be regarded as even slimmer although still existent. The statistical value of 3 further assertions that an EPP should not be established would be 2.2%¹⁹

National Prosecutors - overall

B 7 (b) Are any further mechanisms or agencies necessary?		
Answer	Count	Percentage
No (1)	82	62.12%

¹⁹ See Braum, pp. 14-16

Yes (2)	34	25.76%
No answer	16	12.12%

National Prosecutors - financial interests

B 7 (b) Are any further mechanisms or agencies necessary?		
Answer	Count	Percentage
No (1)	20	57.14%
Yes (2)	9	25.71%
No answer	6	17.14%

National Prosecutors - trans-national crime

B 7 (b) Are any further mechanisms or agencies necessary?		
Answer	Count	Percentage
No (1)	38	59.38%
Yes (2)	16	25.00%
No answer	10	15.63%

2. *Specific situations of need*

In compliance with the above results, a clear majority of national interviewees state never having felt a need for a mediating or conflict-resolving institution in European cases. Where conflicts have emerged, national interviewees report an ability to sort these out collegially with their colleagues in other member states. A significant minority of interviewees have experienced jurisdictional disagreements and have chosen to involve Eurojust for their resolution and are obviously satisfied with this mechanism. In other words a solution is in place for these much discussed practical problems. Defence lawyers might naturally be expected to view such informal solutions with some concern.

The importance and functionality of collegial cooperation especially in serious cases is emphasised in the Luxemburg report and the system developed there with known foreign colleagues to decide upon matters of jurisdiction is described as working well. The vulnerability of such a system not based upon clear legal re-

quirements is, however, also pointed out.²⁰ The report, contrary to opinions expressed in other member states, also expresses dissatisfaction at experiences gained when attempting to resolve such issues via Eurojust.²¹

National Prosecutors - overall

B 11 Has interviewee ever felt the need for a mediating instance? (NB This question relates to an institution to mediate - sort out conflicts- between the agencies of different member states, not to mediate the case itself.)		
Answer	Count	Percentage
No (1)	80	60.61%
Yes: to clarify / explain the law (2)	14	10.61%
Yes: to clarify / explain the relevant procedure (3)	17	12.88%
Yes: To decide on jurisdiction / assign responsibility so far interviewee uses Eurojust (4)	28	21.21%
Yes: To decide on jurisdiction / assign responsibility has not been using Eurojust so far (5)	6	4.55%
Yes: To decide whether a measure is appropriate (6)	10	7.58%
other (please explain) (7)	18	13.64%

National Prosecutors - financial interests

B 11 Has interviewee ever felt the need for a mediating instance? (NB This question relates to an institution to mediate - sort out conflicts- between the agencies of different member states, not to mediate the case itself.)		
Answer	Count	Percentage
No (1)	20	57.14%
Yes: to clarify / explain the law (2)	2	5.71%
Yes: to clarify / explain the relevant procedure (3)	4	11.43%

²⁰ Braum, p. 11

²¹ Braum, p. 12-3

Yes: To decide on jurisdiction / assign responsibility so far interviewee uses Eurojust (4)	4	11.43%
Yes: To decide on jurisdiction / assign responsibility has not been using Eurojust so far (5)	1	2.86%
Yes: To decide whether a measure is appropriate (6)	2	5.71%
other (please explain) (7)	6	17.14%

National Prosecutors - trans-national crime

B 11 Has interviewee ever felt the need for a mediating instance? (NB This question relates to an institution to mediate - sort out conflicts- between the agencies of different member states, not to mediate the case itself.)		
Answer	Count	Percentage
No (1)	40	62.50%
Yes: to clarify / explain the law (2)	6	9.38%
Yes: to clarify / explain the relevant procedure (3)	6	9.38%
Yes: To decide on jurisdiction / assign responsibility so far interviewee uses Eurojust (4)	11	17.19%
Yes: To decide on jurisdiction / assign responsibility has not been using Eurojust so far (5)	4	6.25%
Yes: To decide whether a measure is appropriate (6)	4	6.25%
other (please explain) (7)	10	15.63%

The much discussed problem of conflict of jurisdiction appears to be functionally provided for at the European level. The only caveat in this context is that current mechanisms are informal rendering them intransparent and therefore not conducive to defence scrutiny or judicial review if deemed necessary.

3. *The supra-nationalised perspective*

The supra-nationalised perspective may be regarded as somewhat different if one considers the fundamental difference between a nationally-rooted and European perspective. Despite their background as national criminal justice practitioners and their understanding of their national colleagues, supra-national interviewees were clear in their declarations that problems exist at other levels; the European perspective is currently not adequately taken into consideration in European cases. A larger, clear majority of 64% of EU financial interests specialist supra-national interviewees see this more strongly as the case in relation to EU budget related cases.

In response to a question as to whether their own institutions' work would become easier if it were given powers to collect evidence itself in the member states, overall 50% answered in the negative, whilst only a minority of 36% of supra-national EU financial interests specialists did so. 37% overall and 50% of supra-national EU financial interests specialists regarded such powers as potentially improving the efficiency of their work. A few interviewees were careful to emphasise that it, however, remains a highly sensitive matter whether this efficiency-gain is provided for.

Supra-national interviewees - overall

B26 Is the European perspective adequately taken into consideration in the current approach to these cases?		
Answer	28	93.33%
No answer	2	6.67%

B26a For Trans-national cases?		
Answer	Count	Percentage
Yes (Y)	4	13.33%
No (N)	17	56.67%
don't know (D)	5	16.67%
No answer	4	13.33%

B26b For EU budget cases?		
Answer	Count	Percentage
Yes (1)	4	13.33%
No (2)	17	56.67%

don't know (3)	5	16.67%
No answer	4	13.33%

B25 Would Eurojust/Europol/OLAF's work become more effective if it could collect evidence itself directly in the MS?		
Answer	Count	Percentage
Yes (Y)	11	36.67%
No (N)	15	50.00%
Don't know (D)	4	13.33%
No answer	0	0.00%

Supra-national interviewees - financial interests

B26 Is the European perspective adequately taken into consideration in the current approach to these cases?		
Answer	Count	Percentage
Answer	14	100.00%
No answer	0	0.00%

B26a For Trans-national cases?		
Answer	Count	Percentage
Yes (Y)	1	7.14%
No (N)	8	57.14%
don't know (D)	4	28.57%
No answer	1	7.14%

B26b For EU budget cases?		
Answer	Count	Percentage
Yes (1)	1	7.14%
No (2)	9	64.29%
don't know (3)	3	21.43%
No answer	1	7.14%

B25 Would Eurojust/Europol/OLAF's work become more effective if it could collect evidence itself directly in the MS?		
Answer	Count	Percentage
Yes (Y)	7	50.00%

No (N)	5	35.71%
Don't know (D)	2	14.29%
No answer	0	0.00%

C. A European Public Prosecutor

1. *The national perspective on a supra-national prosecutor.*

The interviews for this study took place in the time period immediately before and after the Treaty of Lisbon came into force and in which the Spanish EU Presidency and the new European Commission lent this topic a high profile. The subject of a European Public Prosecutor (or an European Public Prosecutor's Office as it is now known) was thus prominent in interviewees minds as displayed clearly by all but three (of 162 interviewees) interpretation of question 20 relating to such an office (as opposed to any national or even regional alternative).

Having negated a need for further mechanisms and agencies, interviewees were surprisingly divided as to the potential benefit of a European Public Prosecutor with 51% of national interviewees overall stating that such an office would improve the situation and only 42% declaring that a(n improved) support service would be preferable (note that this 42% naturally includes many of those who responded no to question 20. For further analysis see *infra* "shaping a European criminal justice system" p. 140 et seq.). Perhaps not entirely surprisingly the affirming majority is slightly higher for EU financial interests specialists national interviewees and the situation is reversed for trans-national specialist national interviewees amongst whom only a large minority of 47% believe a European Public Prosecutor would improve the situation and 53% believe such an office would not. Interestingly amongst EU financial interests specialists 49% of national interviewees state that a support service would be preferable and adequate whilst amongst trans-national specialists this is 47%.

The Luxemburg report expresses clear puzzlement on practitioners' behalf as to the suggestion of a European public prosecutor noting that there are feelings it is based upon a political lobbying for a European jurisdiction and a political rather than judicial need. Whilst an exploration of this topic is not excluded, many practical concerns are expressed above all a lack of clarity in competence definition and the fact that a European public prosecutor would need to plead before national

courts but be far removed from national practice thus lacking acceptance and legitimacy.²²

National Prosecutors - overall

B 20 Would the situation be improved if a centralised, specialised investigation /prosecution unit with specialist knowledge of such cases (and European financial law) be assigned exclusive jurisdiction for such cases?/ be given clearly demarcated competence for such cases?		
Answer	Count	Percentage
No (1)	65	49.24%
Yes (2)	67	50.76%
No answer	0	0.00%

B 20 (a) Or would a support service be preferable / adequate?		
Answer	Count	Percentage
No (1)	40	30.30%
Yes (2)	56	42.42%
No answer	36	27.27%

National Prosecutors - financial interests

B 20 Could a centralised, specialised investigation /prosecution unit with specialist knowledge of such cases and European financial law be assigned exclusive jurisdiction for such cases?/ be given clearly demarcated competence for such cases?		
Answer	Count	Percentage
No (1)	16	45.71%
Yes (2)	19	54.29%

B 20 (a) Or would a support service be preferable / adequate?		
Answer	Count	Percentage
No (1)	10	28.57%

²² Braum, p. 16-7

Yes (2)	17	48.57%
No answer	8	22.86%

National Prosecutors - trans-national crime

B 20 Could a centralised, specialised investigation /prosecution unit with specialist knowledge of such cases and European financial law be assigned exclusive jurisdiction for such cases?/ be given clearly demarcated competence for such cases?		
Answer	Count	Percentage
No (1)	34	53.13%
Yes (2)	30	46.88%

B 20 (a) Or would a support service be preferable / adequate?		
Answer	Count	Percentage
No (1)	11	17.19%
Yes (2)	30	46.88%
No answer	23	35.94%

Overall it is clear that national interviewees recognise the potential benefits of an EPP though some of these interviewees would prefer a support service, usually developed further than what is currently in place. A full exploration of the study results is provided infra – see p. 140 et seq.

2. *The supra-national perspective*

As is consistent with other responses, supra-national interviewees were more clearly affirmative of a European Public Prosecutor potentially improving the investigation and prosecution of European cases especially in relation to EU budget relations (for which the majority is a convincing 67%). Supra-national interviewees were partially hesitant to answer this question emphasising the political nature of such a decision. Even amongst those affirming the improvement such a move would bring, a few interviewees were careful to emphasise that the final decision will not be made on the basis of such factual reasons and that there are good reasons for this. A larger number (11 so 36.7%) were adamant as to the need for it. A

majority also explicitly rejected the idea of even an improved support service as preferable.

Amongst supra-national interviewees specialised in dealing with EU financial interests related cases, this standpoint was vastly clearer. The greater majority of 79% state the need for a European Public Prosecutor overall, whilst 86% do so specifically for EU budget cases. 86% reject an even improved support service as preferable. Especially in relation to EU financial interests, a certain degree of impatience was detectable with several interviewees explaining that attempts have been made over decades to deal with European cases in a co-operative setting and that this is simply insufficient for a number of reasons.

Supra-national interviewees - overall

B27 Would the situation be improved if a centralised, specialised investigation/prosecution unit, with specialist knowledge of such cases (and criminal and criminal procedural law in the MS) be assigned exclusive jurisdiction for such cases/ or alt. be given clearly demarcated competence for such cases?		
Answer	Count	Percentage
Yes (Y)	17	56.67%
No (N)	6	20.00%
don't know (U)	5	16.67%
No answer	2	6.67%

B27a For trans-national cases?		
Answer	Count	Percentage
Yes (Y)	13	43.33%
No (N)	9	30.00%
don't know (D)	8	26.67%
No answer	0	0.00%

B27b For EU Budget cases?		
Answer	Count	Percentage
Yes (1)	20	66.67%
No (2)	6	20.00%
don't know (3)	4	13.33%
No answer	0	0.00%

B27c Should have:		
Answer	Count	Percentage
exclusive jurisdiction (1)	3	10.00%
clearly demarcated competences (2)	11	36.67%
other (3)	6	20.00%
No answer	10	33.33%

B27d Or is/would a (n improved) support service be preferable/adequate?		
Answer	Count	Percentage
Not preferable (N)	17	56.67%
Support service preferable (Y)	9	30.00%
No answer	4	13.33%

Supra-national interviewees - financial interests

B27 Would the situation be improved if a centralised, specialised investigation/prosecution unit, with specialist knowledge of such cases (and criminal and criminal procedural law in the MS) be assigned exclusive jurisdiction for such cases/ or alt. be given clearly demarcated competence for such cases?		
Answer	Count	Percentage
Yes (Y)	11	78.57%
No (N)	2	14.29%
don't know (U)	0	0.00%
No answer	1	7.14%

B27a For trans-national cases?		
Answer	Count	Percentage
Yes (Y)	8	57.14%
No (N)	3	21.43%
don't know (D)	3	21.43%
No answer	0	0.00%

B27b For EU Budget cases?		
Answer	Count	Percentage
Yes (1)	12	85.71%

No (2)	2	14.29%
don't know (3)	0	0.00%
No answer	0	0.00%

B27c Should have:		
Answer	Count	Percentage
exclusive jurisdiction (1)	3	21.43%
clearly demarcated competences (2)	5	35.71%
other (3)	4	28.57%
No answer	2	14.29%

B27d Or is/would a (n improved) support service be preferable/adequate?		
Answer	Count	Percentage
Not preferable (N)	12	85.71%
Support service preferable (Y)	2	14.29%
No answer	0	0.00%

These interview results are clearly supportive of the potential added value of an EPP. Supra-nationally based practitioners are clearly convinced of its benefits, overwhelmingly so for combatting to EU financial interest related offences.

A slim majority of national interviewees recognise the potential benefits of an EPP lending weight to these arguments. However, the study results cannot but also act as a warning; almost half (relation to EU financial interest related offence specialist national interviewees the number is a very significant minority of 46%) of the national interviewees expressly reject the idea of an EPP having benefits and indeed a significant proportion the institution as a whole vehemently (36 – 27.3% of the sample as a whole). Some of those recognising the potential benefits argue that a support service would be preferable, in part for acceptance reasons.

If steps are taken to develop an EPP, they must be taken in recognition that this is a controversial institution in criminal justice contexts alone (never mind broader political ones); the subject of strong support but also of clear rejection from significant sections of practitioners. The structures established; the how of an EPP installation and indeed the who are likely to be crucial issues. Significant challenges are likely to be faced in establishing the necessary co-operation with national prosecutors.

D. The Status Quo

In order to understand their stance on further developments, interviewees were questioned briefly on their opinions of the current situation.

1. A European Criminal Justice System?

Interviewees were questioned as to how they view the current European dynamic within criminal justice processes. Reference was made to a case in which the Polish Constitutional Court effectively allowed the implementation of British law within its jurisdiction.

Only a relatively small but significant proportion of national prosecutorial interviewees recognise any encroachment of foreign law upon their jurisdiction; a clear majority rejecting such an idea. Yes answers often relate to sentencing being influenced by cases against co-perpetrators in other jurisdictions. A slightly broader minority do recognise other systems and their values exercising some influence.

In line with other sections of the study, however, the vast majority of national interviewees reject the notion that European cases are somehow dealt with differently. Over 70% negate this.

Interestingly amongst national EU financial interest expert interviewees, it is no longer a majority who reject the notion of encroachment although the difference to the overall sample is largely explained by “don’t know” and not affirmative answers. Again notably these national EU financial interest experts are also less clear in their rejection of the idea that European cases are treated differently in a parallel system of sorts. A clear majority are still negating this idea but the difference to the overall sample is explained by a significantly larger proportion of interviewees stating that a special system is emerging to deal with European cases.

Trans-national crime specialists (national) apparently feel the effects of encroachment more strongly than the average interviewee, with answer proportions closer to financial interest experts on this. However unlike, this group of expert colleagues, they see their cases very clearly embedded in their “normal” work; with a strong majority, similar to that of the overall sample, rejecting the idea that a parallel system is emerging.

National Prosecutors - overall

B 24 Have the measures in place resulted in any effective encroachments of foreign law on your national territory? (e.g. recent UK/Polish – Jakub Tomczak –)		
Answer	Count	Percentage
No (1)	77	58.33%
Yes (2)	24	18.18%
No answer	31	23.48%

B 25 Is a second criminal justice system emerging to deal with European cases i.e. are different procedures to national ones being used in relation to certain measures or cases?		
Answer	Count	Percentage
No (1)	93	70.45%
Yes (2)	16	12.12%
No answer	23	17.42%

National Prosecutors - financial interests

B 24 Have the measures in place resulted in any effective encroachments of foreign law on your national territory? (e.g. recent UK/Polish – Jakub Tomczak –)		
Answer	Count	Percentage
No (1)	17	48.57%
Yes (2)	7	20.00%
No answer	11	31.43%

B 25 Is a second criminal justice system emerging to deal with European cases i.e. are different procedures to national ones being used in relation to certain measures or cases?		
Answer	Count	Percentage
No (1)	22	62.86%
Yes (2)	7	20.00%
No answer	6	17.14%

National Prosecutors - trans-national crime

B 24 Have the measures in place resulted in any effective encroachments of foreign law on your national territory? (e.g. recent UK/Polish – Jakub Tomczak –)		
Answer	Count	Percentage
No (1)	34	53.13%
Yes (2)	14	21.88%
No answer	16	25.00%

B 25 Is a second criminal justice system emerging to deal with European cases i.e. are different procedures to national ones being used in relation to certain measures or cases?		
Answer	Count	Percentage
No (1)	46	71.88%
Yes (2)	6	9.38%
No answer	12	18.75%

Defence lawyers

Defence interviewees are more willing to provide an answer to this question though the rate of these interviewees who reject any notion of foreign law encroaching upon the systems they work in is similar to (though an even stronger majority) than their prosecutorial colleagues.

Relating to the emergence of a parallel system, a larger proportion of defence interviewees provide an answer. In this case also a significantly larger proportion state that an alternative system is emerging to deal with European cases – although a majority still reject this idea. This would appear to lend support to the study finding that the defence is excluded from these kinds of cases; in other words a system is developing to which, unlike their national ones, they have no or far lesser access.

B 6 Have the measures in place resulted in any effective encroachments of foreign law on interviewee's national territory (e.g. recent UK / Polish - Jakub Tomacz - case)?		
Answer	Count	Percentage
No (1)	45	80.36%

Yes (2)	11	19.64%
No answer	0	0.00%

B 7 Is a second criminal justice system emerging to deal with European cases i.e. are different procedures to national ones being used in relation to certain measures or cases?

Answer	Count	Percentage
No (1)	32	57.14%
Yes (2)	17	30.36%
No answer	7	12.50%

Though some indicators that we are in the early stages of a European criminal justice system emerging are reported, the majority of national prosecutor and defence interviewees clearly (less so for defence interviewees) reject the notion of foreign law encroaching upon their territory or of the emergence of an entirely parallel system.

2. *The European Arrest Warrant*

As it is the only mutual recognition instrument in place widely and for a long enough time to draw lessons from, interviewees were asked their opinion on the European Arrest Warrant (EAW).

National prosecutors clearly view the EAW as having broadened the reach of their work though a significant number say this is not the case. The Luxemburg report states prosecutors there also as negating any net-widening effect.²³ Of those who recognise a broadening of their reach, all but 5 – a very small minority – view this as entirely legitimate; occasionally stating that the previous situation was the one lacking legitimacy. Those who dispute legitimacy are presumably also in part those few who view the EAW as problematic in human rights terms. More interviewees do express that there are occasionally problems (relating to proportionate use above all) but do not view these as so significant to justify a general trend relating to rights standards.

The benefits of the EAW for national prosecutorial work are clearly felt even more strongly, and thus all the more forcefully regarded as legitimate by national EU financial interest specialists. The EAW would appear to be of lesser use to na-

²³ Braum p. 14.

tional prosecutors dealing with trans-national cases. The lower rate affirming legitimacy in this category corresponds to the lesser finding of a net-widening effect. Trans-national interviewees' responses to question 23b display clearly that their attitudes to the EAW are marked by efficiency, not human rights concerns.

National defence interviewees agree approximately to the same degree (as the overall prosecutorial sample) that the EAW has extended the reach of state criminal justice systems though – perhaps not surprisingly, a larger proportion feel unable to judge this. Correspondingly defence interviewees are also less happy to discuss the legitimacy of this though the proportion of defence lawyers viewing this development as illegitimate is much higher; forming a significant minority. This concern is also reflected by the comparatively far higher proportion of these interviewees who view the EAW as undermining human rights standards. This confirms the different perspective the defence has of how European cases are handled and strengthens the idea that such cases are being dealt with in a different system from their vantage point. A system which, it would appear, is far more one sided.

National Prosecutors - overall

B 23 Has use of the EAW had a net-widening effect?		
Answer	Count	Percentage
Yes (Y)	79	59.85%
No (N)	53	40.15%
No answer	0	0.00%

B 23 (a) If 'yes', is this legitimate?		
Answer	Count	Percentage
Yes (Y)	73	55.30%
No (N)	5	3.79%
No answer	54	40.91%

B 23 (b) Are such procedures undermining Human Rights standards?		
Answer	Count	Percentage
No (1)	98	74.24%
Yes (2)	3	2.27%
No answer	31	23.48%

National Prosecutors - financial interests

B 23 Has use of the EAW had a net-widening effect?		
Answer	Count	Percentage
Yes (Y)	23	65.71%
No (N)	12	34.29%

B 23 (a) If 'yes', is this legitimate?		
Answer	Count	Percentage
Yes (Y)	22	62.86%
No (N)	1	2.86%
No answer	12	34.29%

B 23 (b) Are such procedures undermining Human Rights standards?		
Answer	Count	Percentage
No (1)	29	82.86%
Yes (2)	0	0.00%
No answer	6	17.14%

National Prosecutors - trans-national crime

B 23 Has use of the EAW had a net-widening effect?		
Answer	Count	Percentage
Yes (Y)	35	54.69%
No (N)	29	45.31%

B 23 (a) If 'yes', is this legitimate?		
Answer	Count	Percentage
Yes (Y)	30	46.88%
No (N)	3	4.69%
No answer	31	48.44%

B 23 (b) Are such procedures undermining Human Rights standards?		
Answer	Count	Percentage
No (1)	44	68.75%
Yes (2)	0	0.00%
No answer	20	31.25%

Defence Lawyers

B 8 Has use of EAW had a net-widening effect?		
Answer	Count	Percentage
No (1)	17	30.36%
Yes (2)	30	53.57%
No answer	9	16.07%

B 8(a) If 'yes', is this legitimate?		
Answer	Count	Percentage
No (1)	12	21.43%
Yes (2)	22	39.29%
No answer	22	39.29%

B 8(b) Are such procedures undermining Human Rights standards?		
Answer	Count	Percentage
No (1)	26	46.43%
Yes (2)	22	39.29%
No answer	8	14.29%

3. *The supra-nationalised perspective*

Interestingly an almost identical proportion of supra-national interviewees attest to the EAW as assisting their work as confirm it has had a net-widening effect amongst national prosecutorial interviewees. Furthermore a greater proportion of supra-national interviewees respond with “don’t know” rather than no (presumably due to the nature of the supra-national sample). Interestingly supra-national interviewees do not, however, attribute this benefit to their reach being broadened but to

accelerating and simplifying the processes previously used. This is widely regarded as a legitimate development.

Interestingly, in clear contrast to the result amongst national interviewees, supra-national EU financial interest expert interviewees view the EAW as comparatively less useful and not as expanding their reach. Apparently the EAW has a different impact upon the work of those working at the supra-national level.

Supra-national interviewees - overall

B30 Has the European Arrest Warrant brought efficiency gains for your work?		
Answer	Count	Percentage
Yes (Y)	18	60.00%
No (N)	7	23.33%
Don't know (D)	5	16.67%
No answer	0	0.00%

B30a Has it had a net-widening effect?		
Answer	Count	Percentage
Yes (Y)	6	20.00%
No (N)	11	36.67%
Don't know (D)	10	33.33%
No answer	3	10.00%

B30b (Not for OLAF:) Any comments – e.g. on the legitimacy of this?		
Answer	Count	Percentage
Answer	15	50.00%
No answer	15	50.00%

Supra-national interviewees - financial interests

B30 Has the European Arrest Warrant brought efficiency gains for your work?		
Answer	Count	Percentage
Yes (Y)	6	42.86%
No (N)	4	28.57%
Don't know (D)	4	28.57%
No answer	0	0.00%

B30a Has it had a net-widening effect?		
Answer	Count	Percentage
Yes (Y)	2	14.29%
No (N)	7	50.00%
Don't know (D)	5	35.71%
No answer	0	0.00%

B30b (Not for OLAF:) Any comments – e.g. on the legitimacy of this?		
Answer	Count	Percentage
Answer	3	21.43%
No answer	11	78.57%

The EAW is largely viewed as a success by the majority of criminal justice practitioners. Defence lawyers are more critical as to its impact on human rights standards than prosecutors. Interestingly national prosecutors view the EAW's positive effect to include extending their reach whilst their supra-nationalise equivalents recognise only its beneficial accelerating effects.

E. Quo Vadis - Further Development

Interviewees were also questioned as to more theoretical development on the European level. More extreme, ideal type suggestions were made to encourage more open and clear discussion of future development.

Interviewees were asked on the one hand about centralising information (or investigative intelligence) and evidence (in as far as possible) within the EU and as to whether this would assist in reducing obstacles to dealing with European cases. Of national interviewees, 55% deemed this desirable as did 57% of EU financial interests specialists and 57% of trans-national specialist interviewees. Support was even greater amongst supra-national interviewees at 80% and 93% of supra-national EU financial interests specialists although at this level a number of concerns about evidence and restrictions upon its use were recorded. Amongst nationally-based interviewees 8 (6.1% - 4 of whom are financial interest offences experts so 11.4% of that group) expressly restricted any development called for to information excluding it for evidence. A further 12 interviewees (so 9.1% of the sample) named spe-

cific forms of information for which they would like this development, excluding anything further.²⁴

Interviewees were then explicitly reminded of the European Arrest Warrant (which works on a highly decentralised basis and is strongly praised by both national and supra-national interviewees) and asked whether having a kind of “one-stop-shop” to which they could address their needs for coercive measures in another member state would aid them in overcoming delay. 46% of national interviewees answered in the affirmative with 31% explicitly rejecting such an institution, some of the latter vociferously! A few (3 or 2.3%) stated what may have been on many minds; that they would like this service but not the interference with an investigation of their own. A small majority (51%) of EU financial interests specialists were in favour of this as were trans-national specialist interviewees. Amongst supra-national interviewees 47% answered positively overall and 71% of supra-national EU financial interests specialists. Where this idea was rejected by practitioners working at the supra-national level, this was for reasons of practicability.

The Luxemburg report expresses practitioners there as being clearly reticent as to the need to centralise information or evidence in trans-national cases. They see needs as being met by the current set up and question this meeting any need of judicial practice.²⁵

National Prosecutors - overall

B 26 Would the possibility of centralising information and evidence in investigations in the EU assist in reducing obstacles?		
Answer	Count	Percentage
No (1)	38	28.79%
Yes (2)	73	55.30%
No answer	21	15.91%

²⁴ A few interviewees also made specific suggestions of their own such as for an EU criminal records database or a DNA database.

²⁵ Braum, p. 15-6

B 27 In view of interviewee's experience with the European Arrest Warrant, would the possibility of obtaining evidence for coercive acts for all of the EU Member States from a central EU service assist interviewee in overcoming delays?

Answer	Count	Percentage
No (1)	41	31.06%
Yes (2)	61	46.21%
No answer	30	22.73%

National Prosecutors - financial interests

B 26 Would the possibility of centralising information and evidence in investigations in the EU assist in reducing obstacles?

Answer	Count	Percentage
No (1)	8	22.86%
Yes (2)	20	57.14%
No answer	7	20.00%

B 27 In view of interviewee's experience with the European Arrest Warrant, would the possibility of obtaining evidence for coercive acts for all of the EU Member States from a central EU service assist interviewee in overcoming delays?

Answer	Count	Percentage
No (1)	10	28.57%
Yes (2)	18	51.43%
No answer	7	20.00%

National Prosecutors - trans-national crime

B 26 Would the possibility of centralising information and evidence in investigations in the EU assist in reducing obstacles?

Answer	Count	Percentage
No (1)	8	22.86%
Yes (2)	20	57.14%
No answer	7	20.00%

B 27 In view of interviewee's experience with the European Arrest Warrant, would the possibility of obtaining evidence for coercive acts for all of the EU Member States from a central EU service assist interviewee in overcoming delays?		
Answer	Count	Percentage
No (1)	10	28.57%
Yes (2)	18	51.43%
No answer	7	20.00%

Supra-national interviewees - overall

B28 Would the possibility of centralising information and evidence in investigations in the EU assist in reducing obstacles to such cases being efficiently and comprehensively dealt with?		
Answer	Count	Percentage
Yes (Y)	24	80.00%
No (N1)	3	10.00%
No - this isn't practicable (N2)	0	0.00%
No - this is objectionable (N3)	1	3.33%
No - direct contact is better (N4)	0	0.00%
Don't know (D)	2	6.67%
No answer	0	0.00%

B29 In your view would the possibility of obtaining evidence for coercive acts for all of the EU Member States from a central EU service assist you (or your colleagues in the member states) in overcoming delays?		
Answer	Count	Percentage
Yes (Y)	14	46.67%
No (N1)	5	16.67%
No - this isn't practicable (N2)	5	16.67%
No - this is objectionable (N3)	3	10.00%
No - direct contact is better (N4)	0	0.00%
Don't know (D)	3	10.00%
No answer	0	0.00%

Supra-national interviewees - financial interests

B28 Would the possibility of centralising information and evidence in investigations in the EU assist in reducing obstacles to such cases being efficiently and comprehensively dealt with?		
Answer	Count	Percentage
Yes (Y)	13	92.86%
No (N1)	0	0.00%
No - this isn't practicable (N2)	0	0.00%
No - this is objectionable (N3)	1	7.14%
No - direct contact is better (N4)	0	0.00%
Don't know (D)	0	0.00%
No answer	0	0.00%

B29 In your view would the possibility of obtaining evidence for coercive acts for all of the EU Member States from a central EU service assist you (or your colleagues in the member states) in overcoming delays?		
Answer	Count	Percentage
Yes (Y)	10	71.43%
No (N1)	0	0.00%
No - this isn't practicable (N2)	3	21.43%
No - this is objectionable (N3)	0	0.00%
No - direct contact is better (N4)	0	0.00%
Don't know (D)	1	7.14%
No answer	0	0.00%

Interviewees tended to be positive about the prospect of centralising information and, to a certain extent, evidence in as far as practicable. A large minority of national interviewees were supportive of a central service to co-ordinate coercive measures in all member states. Interviewees were, however, divided with significant minorities opposing such developments. Support for such developments was much greater amongst supra-nationalised interviewees.

F. Defence

The need felt for development on the defence side was expressed clearly by defence lawyers and is explored above (see Part II.F.). However, when it came to expressing a preference as to which solutions they would prefer, defence interviewees were broadly if not entirely consistent with the strength of belief in the respec-

tive solution displayed in the more general statistics. Of those stating a preference (44 – 78.6%), 56.8% prefer a European defence network, 50% (or 56.8% if counting those who require it to be at a high standard) prefer an approximation of law although this is often stated in combination with one other measure, 18.2% prefer a supra-national chamber, 15.9% a European defence instance (and these interviewees express this as a very strong preference), 4.5% prefer a supervising prosecutor (11.4% if one includes those interviewees who wish to have this figure for cross-examination at trial). Of the 6.8% who desire an “other” solution, only 1 has a constructive solution: a European investigating magistrate whilst the other two interviewees wish only for no further European mechanisms or institutions to be created.

The Luxemburg defence lawyers fall into line with the majority of their interviewed colleagues calling on the one hand for legislative changes and a European defence network.²⁶

B 2 Was interviewee in a disadvantaged position compared to cases involving national criminal justice system institutions only?		
Answer	Count	Percentage
No (1)	21	37.50%
Yes - please briefly explain why (2)	35	62.50%
No answer	0	0.00%
Non completed	0	0.00%

B 2(a) Has interviewee presented this as an argument at trial / during case settlement discussions? Did it have any effect?		
Answer	Count	Percentage
No (1)	38	67.86%
Yes (2)	18	32.14%
No answer	0	0.00%

B2(b) Would this issue be resolved		
Answer	Count	Percentage
a) if a prosecutor supervised the coercive measures in the other MS in	18	32.14%

²⁶ See Braum, p. 23 et seq.

accordance to agreed criterion? (1)		
b) the measure undertaken was permitted by a supra-national chamber prior to its use? (2)	19	33.93%
c) if a European defence network were in place? (3)	31	55.36%
d) if a supra-national defence instance were in place (NB: structure could be entire centralised or of a European Defence Office with a deputy in each MS)? (4)	14	25.00%
e) by an approximation of law? (5)	34	60.71%
Other	9	16.07%

B 2(c) Which solution would interviewee prefer and why? Please also note any comments on potential make-up and regulation of such bodies - e.g. appointment to a defence network.		
Answer	44	78.57%
No answer	12	21.43%

National Prosecutors – overall

B 21 Do mutual recognition cases cause problems for the defence?		
Answer	Count	Percentage
No (1)	66	50.00%
Yes (2)	42	31.82%
No answer	24	18.18%

B 21 (a) Interviewee has:		
Answer	Count	Percentage
not progressed with an investigation because of this? (1)	3	2.27%
faced an argument relating to mutual recognition at trial? (2)	21	15.91%
seen a case end other than you would normally expect because of this? (3)	5	3.79%
experienced other negative consequences because of this? (4)	5	3.79%

recognised that procedures you are dealing with are easier to handle? (5)	12	9.09%
simply recognised a (more theoretical) deficit? (6)	15	11.36%
other, please name: (7)	10	7.58%
not experienced problems with mutual recognition (8)	46	34.85%

B 22 Which of the following does the interviewee regard a possible solution?

Answer	Count	Percentage
a prosecutor supervised the coercive measures in the other MS in accordance to agreed criterion (1)	25	18.94%
the measure undertaken was permitted by a supra-national chamber prior to its use (2)	5	3.79%
a European defence network were in place (3)	33	25.00%
a supra-national defence instance were in place (NB structure could be entire centralised or of a European Defence Office with a deputy in each MS) (4)	11	8.33%
law is approximated (5)	64	48.48%
Other (please provide details): (6)	21	15.91%

B 22 (a) Which solution would interviewee prefer and why?

Answer	80	60.61%
No answer	52	39.39%

As explored above, prosecutorial interviewees were less convinced over all that the defence face problems in such cases or due to mutual recognition mechanisms in particular. Those who chose nevertheless to reflect upon the potential solutions or means of improvement of the current situation, expressed preferences, as explored above, in line with the proportional support found and mostly similar to the statements of defence lawyer interviewees (see immediately supra). There was one major divergence, however, the extreme lack of support, comparatively speaking, for a supra-national chamber to oversee European investigations. Like a handful of

defence lawyers, prosecutors massively pointed to a likely lack of efficiency and thus the time-delaying character of any such institution. Their protest was thus less about such a measure's ability to improve the defence lot (in as far as this was acknowledged as being problematic) but far more about ensuring cases could run smoothly overall. Preventing delayed proceedings is ultimately also a human rights and defence issue but it is clear that prosecutors were expressing their feelings about the viability and practicability of these measures, especially this one, which they immediately recognised as a threat to the smooth running of "their" proceedings.

Of those prosecutors who acknowledged the defence as being disadvantaged (42) 8 provided no indication of a preferred solution, 7 stated that none of these were suitable or they did not know. 16 preferred approximation of law (sometimes explicitly of procedural law)²⁷, 7 most strongly supported a European defence network, 4 a supervising prosecutor (in one case explicitly a national one). Two respectively supported a stronger EJM until law is approximated and improved training whilst individual prosecutors stated greater participation in the investigation, a supra-national chamber or addressing the issue of proportionality in use of European instruments as their improvement methods of choice.

This study certainly presents strong argument for work on any European criminal justice system to be focused as much upon defence development as well as any prosecutorial level. Discussion at the legal level must intensify once again surrounding fundamental, core rights. The current slow pace of progress places a majority of defence lawyers in a very difficult position. As the prosecutorial side develops, discussion must also intensify as to the kind of defence counter-balance required.

To respect the nature of criminal defence, it would appear that only a network of defence lawyers comes into question in terms of any institutionalisation. This is also preferred by defence interviewees alongside approximation, as it is by national prosecutorial interviewees. For any such development the sticking point will be funding (and then how to manage funds), as it is within national criminal justice systems. It is submitted, however, that any reconsideration of a European criminal justice system will have to consider potential funding overall; defence considerations should be made immediately in the course of these. Just as national prosecutors face enormous challenges working on European cases, defence lawyers do too. The potential disadvantages to accused persons are enormous and must be carefully drawn into developmental considerations.

The study results clearly indicate that, at least from the defence perspective, a viable European judicial structure to which all concerned defence lawyers (and indeed defendants) would have access, is a thinkable alternative. Given that this option is far removed from a dialogue one could envisage the member states currently entertaining, it is not developed further, at this point.

G. Shaping a European Criminal Justice System

Determining the need for any particular kind of further development of the European criminal justice system on an empirical basis is a complex matter. The questions underlying this study are highly political, the interviewees involved well aware of this, as well as of differing opinions, experiences, age and nationality (etc.). There is much room for argument, for interpretation, for questioning whether certain answers are not coloured by a political or even emotional leaning, let alone an opinion expected by their professional hierarchy. For this reason interviewees were lead through a series of questions which in some case approached a singular problem or complex from a number of different perspectives. For the cross-referencing analysis which follows the consistence of interviewee answers were tested, helping to draw a clearer picture of the problems faced by criminal justice practitioners and the solutions they view as potentially promising.

The first major point to highlight is that 31.8% (42 of 132 national prosecutorial interviewees – 22 financial interests specialists) indicate that they have no problems in the day to day handling of European cases (see questions B4 and 5 analysed for national prosecutors above). In other words a significant majority of 68.2% see themselves facing specific problems relating to these kinds of cases.

Of those 42 who claim not to experience any problems themselves, 32 (12 of whom are financial interests specialists), however, still call for further development at the EU level; 18 (including 7 financial interest experts) of these for a European Public Prosecutor, 3 (1) further saying it would be an improvement though they would prefer a support service. The remaining 11 (4) see potential improvement in individual EU measures such as those suggested in questions B 26 and 27 (relating respectively to centralisation of information and or evidence and a central service organisation to organise coercive measures to provide for evidence requests, etc.).

The apparent contradictory call for further, and indeed strong institutionalisation, although these prosecutors claim not to face any of the problems identified by the study, is explained by statements that these interviewees do not face the problems

themselves, but know they hinder other colleagues; that they can only not report such problems because of the enormous efforts they make to overcome them, that the current enforcement system is fragmented and much too slow. In other words the bar the study questionnaire set and which was felt by interviewees in discussing problems with European cases was a high one.

Seen from the opposite perspective, only 7.6% of interviewees (10) report having no problems dealing with European cases or seeing a benefit from further (strongly) improving the system at the European level. This leaves 92.4% who declare themselves to be facing hampering problems or desiring improving development.

Of those who report facing problems, 8 advocate no further development. Four of these identify their problems as relating to practicalities, resources and differing attitudes – matters which they do not believe can be addressed by structural reform. Four state that the system is essentially working as it should be. One prosecutor states that reducing the scope of cases is part of his job and should not be viewed as a problem, another that any decisions as to development is for the attorney-general to make. Another comments that cases are not started “if they are doomed” but sees no need to change this situation.

In conclusion: 13.6% of the sample are against further developments at the European level either because they feel they face no problem when dealing with such cases or because they view the system they work in, whatever faults it may have, as working satisfactorily.

If we turn to the 114 nationally based interviewees who have suggestions as to how to solve their problems or see need or potential for improvement by change at the European level, 47 (35.6% % of the sample overall- of 132) unequivocally believe an EPP would improve the situation. A further 18 (13.6% % of the sample overall) believe an EPP would help improve the situation but would prefer a support service to be used. Of these 65 (49.2% of the entire sample who believe an EPP would represent an improvement), only four (3% % of the sample overall, 6.2% of those who believe an EPP would represent an improvement) state that and EPP’s powers should be restricted to protecting the EU’s financial interests. 36 (of the 114 who desire further development – 27.3% of the sample overall) state that a support service is what is needed (and an EPP is out of the question). Only 4 of these expressly state that the status quo is adequate whilst more overtly add that Eurojust must be given further powers to be sufficient.

Of the 114 prosecutors who desire change, 71 and two halves (54.5% of the sample as a whole) state that centralising information and evidence in investiga-

tions in the EU would assist in reducing obstacles. 3 of these state that they wish to restrict centralisation to information, while a further 4 state specific information sources they require. 62 and two halves (47.7%) of 114 state that a central EU service to obtain evidence from coercive acts for all EU member states would assist in overcoming delays. Indeed one of the 18 interviewees who refused to go on record calling for any further EU measures states that such an office might be of significant benefit. 4 of the 114 call for a different measure at the EU level, one for centralisation of expertise at the national level.

As seen above, the sample of 132 contains, 35 interviewees identified by the respective EuroNEEDs partner as an expert for EU financial interest offences and a further 30 who also deal with financial interest crimes. Of these 11 (3 of the EU financial interest specialists. This represents 8.3% and 2.3% respectively of the two samples) were of the 18 who desired no further development of a European criminal justice system. In other words, the majority of those who oppose further development, work at least in contact with the area for which an EPP is mostly hotly debated. They remain a small or at least relatively small minority, however.

13 of 35 EU financial interest offences experts are for an EPP (37.1% of financial interest experts, which represents 9.8% of the sample overall), a further 7 (20% and 5.3% respectively) believe an EPP would improve the situation but prefer a European support service. Of the 30 who also deal with financial interest crimes, 11 (36.7% of this category of prosecutors, 8.3% of the sample overall) are for an EPP whilst 3 (10% and 2.3% of the sample overall) believe an EPP would improve the situation but prefer a European support service. In other words, of those who have experience dealing with financial interest crimes 52,3% (25.8% of the sample overall) believe an EPP would improve the situation though 15.4% (7.6% of the sample overall) of those calculated into this percentage state that they would prefer an improved support service. Support for an EPP is somewhat higher than the sample average of 49.2% whilst preference for a support service is significantly lower than the 42.2% calculated. This latter figure in the overall sample, however includes the interviewees who do not view an EPP as a potential improvement, viewing a support service as the only viable option: this is 10 (28.6%) EU financial interest offences experts and 6 (20%) of those who also deal with financial interest crimes. Together this represents 12.1% of the overall sample. Even so the 26.4% of the overall sample thus calculated to prefer a support service is still very significantly lower than the sample average.

22 of 35 (62.9%) EU financial interest offences experts state that centralising information and evidence in investigations in the EU would assist in reducing obsta-

cles, as do 12 of the 30 (40%) who also deal with financial interest crimes. This constitutes 52.3% support from all of those dealing with financial interest offences. This means they are slightly more reservations about this measure than the interviewees overall which saw 55.5% agreeing that centralising information and evidence might be helpful in reducing obstacles. The 35 financial interest experts are, however, more strongly in favour of this measure than the overall sample.

18 of 35 (51.4%) EU financial interest offences experts state that a central EU service to obtain evidence from coercive acts for all EU member states would assist in overcoming delays. Whilst 14 of the 30 (46.7%) who also deal with financial interest crimes express the same opinion. Thus 49.2% of all of those dealing with financial interest offences support such a measure. As a group and in particular the financial interest experts, they are more strongly supportive of a central EU service from which evidence from coercive acts for all EU member states could be obtained bearing potential to overcome delays, than the sample as a whole (which saw 46.2% answer this question in the affirmative).

It is not entirely simple to draw policy conclusions from this complex analysis. Taken together with the conclusions drawn above, the cautious study finding that an EPP bears potential to improve the currently unsatisfactory solution but will face an “uphill battle” establishing itself is confirmed. Independent of whether or not this development occurs, practitioners working on European cases in the member states require further resources and support mechanisms to improve their handling of these cases. The consolidation of institutions and mechanisms introduced so far foreseen by the Stockholm programme would clearly, however, assist practitioners in identifying which channels and mechanisms to use though the need for further measures of some sort appears clear.

Ultimately it may also prove instructive to draw conclusions and indicators relating to development of a European criminal justice system by examining in greater detail responses to this study bearing a negative stance to such steps. For instance, many of those who deny the need for any further development do so stating that criminal justice systems are working as they should be though they admit that European cases can fail for practical reason and be reduced in their scope to the matters of interest to the national systems which deal with them (overall 29 national prosecutorial interviewees state that reducing the scope of cases is part of their normal work. Of these two state it is a rare and a third that this is for pragmatic, tactical reasons e.g. to allow the disruption of criminal activity. A further 3 inter-

viewees appear to agree with this stance as part for their work whilst a further two, and another partially, see problems described as hampering European cases in a similar light). It can legitimately be asked whether this is an acceptable approach for such crimes.

Those answering these questions see matters from a national perspective, from the viewpoint of how things have always been. They fundamentally disagree with their colleagues who work in a supra-national institution and indeed with many of their national colleagues who acknowledge that the European aspect is short changed.

Ultimately this is, naturally a matter of perspective. In the last years, many European criminal justice systems have developed into ones in which petty crimes are not prosecuted in order to spare resources to deal with serious cases. Some EU member states have rejected such a notion as unsuitable and indeed immoral. The move to reduce the number of cases criminal justice systems respond fully to is, ultimately, also a policy decision; a decision not to invest as many resources as it takes to deal with all crimes; a question of social balance, in other words.

The decisions of member states, by no means unanimous at that, to be selective in their prosecutions, does not necessarily colour, let alone pre-form, that of the European Union. As has been stated in other contexts, the EU represents a unique governance level for which much can certainly be learned from its member states but, ultimately nothing can be seen as a compulsory example. Alone the diversity of the member states on such issues calls the EU to review the situation in its own right.

The fact is, the EU and a European criminal justice system is not at a stage at which it must begin defining principles to reduce the reach of its criminal justice system for pragmatic reasons. While it is wholly rational and indeed reasonable that national prosecutors accept limitations to their work as a given in the current atmosphere of resource scarcity, it is certainly legitimate to suggest a different perspective for the EU. It is submitted, for example, that the EU must not accept national practitioners' view that what they are doing is correct. Though their decisions are likely suitable and rational in their setting, the EU and European perspective sets another one; arguably recognised more clearly by practitioners now working in a supra-national setting.

All interviewee groups in the various settings of this study have opinions on these issues diverging amongst themselves. These are understandably and rightly contentious, difficult topics. They must all be considered equally carefully, also be-

cause any European criminal justice institution must work together with these very practitioners. It is, however, suggested that on a conceptual level, the European perspective is entitled to a „clean slate“ when viewing these issues and those reflecting from or for the European perspective are entitled and may indeed be required to reflect differently upon some of these matters than practitioners working in corresponding national settings.

Many of the developments suggested at an EU criminal justice level are, in effect, the formation of a new system. One designed to protect the financial interests of the EU and, arguably/potentially, to deal with serious cases of trans-national crime which single member states are unable to deal with adequately (as indicated by the closer definitions tentatively offered by the treaty of Lisbon). If, and this is an enormous conditional, a European criminal justice system relates to these offences and only these, it is submitted that parallels to the workings of national criminal justice systems may be misleading.

Relating to the financial interests of the EU, it is imaginably wrong to argue with resource shortages because this is a system which might conceivably pay for itself. Unquestionably there is a serious consideration as to the coherence of criminal justice systems where crimes are prosecuted more comprehensively because these processes pay for themselves but if this is the exception (see § article 325 TFEU) discussed for the EU – i.e. the extent of the EU system as a whole, then this is indeed a special case and should perhaps not be burdened with the resource (and indeed coherence) argument faced in national systems.

In relation to serious cases of organised crime (admitting that this is an incredibly problematic definitional context), it can furthermore be submitted that parallels to national cases may be misleading. The latest studies on prosecution policy indicate that the trend to drop cases does not extend to serious cases such as those of serious organised crime but, above all, that such resource-saving measures are undertaken, to allow for full prosecution of such crimes. Naturally careful further research is necessary to compare European cases to equivalent national cases but consideration is required as to whether it really is comparable to leave aspects of such cases aside or to accept that they fail for legal or practical reasons. It is ventured that most EU member states would view a case having trans-national dimensions, especially where these are considerable, as more serious. As Europol and Eurojust interviewees are careful to point out, national practitioners currently make decisions (as best they can) on an incomplete informational basis. The later them-

selves (and indeed judges when determining sentence) would view these type of offences differently if fully informed. Due to their severity, these crimes – carefully and thus restrictively defined, may well be the very ones normally lent priority at national level (at least in part), given greater resources in order to ensure comprehensive prosecution and punishment. It remains a legitimate subject of debate whether this should not necessarily occur at the European level – especially if this is what is required to discover their full extent. This is a complex debate and should doubtlessly take longer and certainly occur entirely separately to any debate concerning the development of mechanisms to protect the Union’s own property. It is, however, also a debate concerning European cases; crimes facilitated by the EU and thus possibly a legitimate subject of a European criminal justice system and not just national co-operation.²⁸

Ultimately these debates are two different sides of one coin; a European criminal justice system. If developments occur in more than a singular, exceptional area, calls for serious thoughts to issues such as coherence and the development of a genuine system are more than justified.

Naturally these are also offences for which member states have jurisdiction. The principle of subsidiarity requires the Union only to become active when the member states cannot. If however, the Union is better placed, or indeed simply permanently better resourced than these, it seems illegitimate for the member states to block European development with the argument that they could assume this task when their past behaviour and resource situations/priorities speak only for the conclusion that they will not.

Conclusion

The EuroNEEDs study clearly establishes that criminal justice practitioners working on, for and with the European level have clear needs. Doubtlessly steps taken so far have assisted them in overcoming a number of hurdles and indeed the situation will continue to improve. This is in no small part due to the dedication of practitioners working in all settings in which these cases are currently handled. Clarity as to which mechanisms practitioners should use or turn to in which situa-

²⁸ In this regard, note the 14 national prosecutorial interviewees who claim to be forced to reduce the scope of cases due to a lack of co-operation from other member states. Also the 5 further interviewees who report having to do the same because jurisdictional competence is not clearly regulated between member states.

tions (foreseen as consolidation under the Stockholm programme) would doubtlessly further improve this situation.

Nevertheless deficits have also been identified: the European perspective is not as discernible as it should be, even to experienced practitioners, cases cannot be tackled as they should be and are frequently subject to incomplete prosecution at a level not viewed as acceptable by a majority of study interviewees. The practitioners interviewed in the course of the study indicate clearly that European cases see practitioners on many levels still facing clear deficits in their ability to tackle these successfully. It is hoped that these will be reviewed in the light of this study, the scope of action which needs to be taken determined and these needs met through considered action.

From what was established above, it would appear vital that whatever institutional provision is made for the investigation and prosecution of such cases (and it would appear uncontroversial that some is needed) it is on the one hand necessary to ensure sufficient information about cases (phenomenon, behaviour, suspected persons and organisations) are brought together to ensure the full dimensions of these cases are recognised. It is important that a practitioner network of kinds work together with a common sense of purpose to gather evidence (ideally within a legal framework which facilitates this) but, at the same time, that the person forging the case is involved enough in these actions to influence and utilise any knock-on effects they have.

Any such bundling of European prosecutorial power bears incredible potential and cannot take place without ensuring their transparency, accountability and potential submission to judicial review on behalf of those affected by them. Without particular provision for the defence – which admittedly bears its own problems – such developments would represent an unacceptable expansion of “state” or governance power.

Provision must then be made for either comprehensive prosecution of such offences or rules set up for the prosecution parameters in accordance to which such cases are uniformly to be prosecuted.

None of these conclusions are anything but a broad expression of need for an ideal. Nevertheless these correspond to the above findings of the study as to what is currently “going wrong” in European cases. Any further development must thus strive to improve upon what is currently being delivered. Failing that any such development naturally lacks legitimacy.

A detailed exploration of the principle of subsidiarity and what it means cannot be delivered within the context of this report. It can doubtlessly be argued, as it is, by many interviewees that the situation can be improved by better utilization of current mechanisms, that further work at member state level could deliver progress and this is doubtlessly true. It should be noted, however, that just as many experts working on the national level oppose developments such as the establishment of an EPP, a very significant proportion of their colleagues there, as well as those now working in the supra-nationalised institutional setting, view this as the only realistic means to progress; naturally only IF done correctly.

Annex Study basis

A. National sample

Certain information was requested from national interviewees to validate the interviewee base as this was largely beyond the control of the project management. It is presented below for information purposes.

National Prosecutors - overall

B 12 Has interviewee ever provided evidence / assistance for another member state?		
Answer	Count	Percentage
No (1)	18	13.64%
Yes (2)	114	86.36%
No answer	0	0.00%

B 12 (a) If, yes, please explain briefly what evidence or assistance:		
Answer	Count	Percentage
Answer	99	75.00%
No answer	33	25.00%

National Prosecutors - financial interests

B 12 Has interviewee ever provided evidence / assistance for another member state?		
Answer	Count	Percentage
No (1)	9	25.71%
Yes (2)	26	74.29%

B 12 (a) If, yes, please explain briefly what evidence or assistance:		
Answer	Count	Percentage
Answer	24	68.57%
No answer	11	31.43%

National Prosecutors - trans-national crime

B 12 Has interviewee ever provided evidence / assistance for another member state?		
Answer	Count	Percentage
No (1)	5	7.81%
Yes (2)	59	92.19%

B 12 (a) If, yes, please explain briefly what evidence or assistance:		
Answer	49	76.56%
No answer	15	23.44%

B. Defence sample

B 1 Has interviewee ever dealt with cases involving		
Answer	Count	Percentage
EAW (1)	37	66.07%
OLAF (2)	23	41.07%
Eurojust (3)	17	30.36%
(EJN) (4)	6	10.71%
Europol (5)	23	41.07%
FinCen (re EU cases) (6)	4	7.14%
Other	24	42.86%

18 interviewees named further or “other institutions” having been involved in cases they had worked on. Of these 10 named Interpol, 6 direct contact with foreign authorities and four liaison magistrates.

C. Supra-national sample:

OLAF 7

Europol 7

Eurojust 16