



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : Mr José Luís Lopes da Mota, President of Eurojust
to : Ministry of Justice, President of the Council (JHA Council)
Subject : Cooperation Eurojust and OLAF- Approval by Council

Dear Excellency,

Eurojust is pleased to be able to submit for approval the attached draft Practical Agreement on arrangements of Cooperation between Eurojust and the European Anti-Fraud Office (OLAF).

Eurojust is further pleased to state that the negotiations with OLAF have recently concluded. Full agreement has now been reached on the attached document. For final ratification, in accordance with Eurojust's compliance mechanisms, it has found the final approval of the College of Eurojust by decision of 17 March 2008, the approval of the Joint Supervisory Body (JSB) by decision of 26 April 2007, re-iterated on 24 April 2008, and it is now submitted to yourself as the last instance.

The document has also benefited by, in line with compliance mechanisms of OLAF, consultation with the European Data Protection Supervisor, whose suggestions have been incorporated into the document.

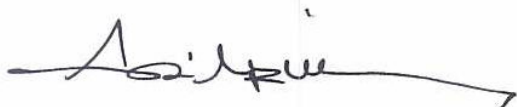
The agreement governs both modalities for closer and increased cooperation, as well as provisions for the exchange of general as well as personal data, provisions for which have previously been seen to be one-directional, i.e. OLAF to Eurojust, but the equivalent mechanism enabling Eurojust to communicate personal data to OLAF has been argued to be lacking. It is deemed that this document will fill that void, and by creating legal certainty, enable the much envisioned and highly promoted closer cooperation between Eurojust and OLAF.

It is hoped, that this agreement will continue to increase not only the amount of cases in which cooperation occurs, but also the quality of the work by removing the otherwise existing difficulties, inter alia in compliance with various data protection regimes, and, as a result, allow the possibility to Eurojust and OLAF to exploit to a maximum the available areas in which synergies can be expected.

As the threat of organised crime specifically expands geographically, as well as in size and complexity, especially in regards to ever increasing volume and quality of fraudulent activities regarding the abuse of EU funds, this agreement is seen from the point of view of Eurojust, as an important step to increasing cooperation and as a direct results limit the ability for criminal enterprises / activity to feel potentially sheltered from the reach of the law, by exploiting practical difficulties in cooperation.

As such, Eurojust would welcome the Council's approval on this agreement, and enable Eurojust, as well as following as a direct consequence, individual Member States, to benefit from the increased cooperation with OLAF, to ensure, and be able to enhance, the safety of all of the EU's citizen's, in a demonstrable increase of the coherent and focused fight against crime in general, but specifically crimes against the financial interests of the European Union.

Yours faithfully,



JOSÉ LUÍS LOPES DA MOTA

CC. Mr. Rafael Fernández- Pita y González

CC. Katja Rejec-Longar

CC. Mr. Matevz Pezdirc

CC. Mr. Helmut Hartman

Practical Agreement on arrangements of cooperation between Eurojust and OLAF

Eurojust and OLAF,

Hereinafter referred to as “the Parties”,

Having regard to the Council Decision of 28 February 2002 setting up Eurojust and the Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) as well as Regulations 1073/1999 and 1074/1999 and the tasks, objectives and responsibilities assigned to Eurojust and OLAF in the fight against fraud, corruption and any other criminal offence or illegal activity adversely affecting the European Communities’ financial interests;

Having regard to the opinion of the Joint Supervisory Body of Eurojust of 26 April 2007, re-iterated on 24 April 2008;

After consulting the European Data Protection Supervisor;

Considering that Article 26(3) of the Council Decision setting up Eurojust stipulates that Eurojust shall establish and maintain close co-operation with OLAF;

Considering Articles 26(4) and 27 of the Council Decision setting up Eurojust explicitly dealing with the exchange of information;

Considering the Council Framework Decision of 13 June 2002 on Joint Investigation Teams as well as Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000 and in particular the provision for the setting up of Joint Investigation Teams;

Considering that both Parties have adequate rules in place regarding the protection of personal data;

Considering that it is within the common interest of Eurojust and OLAF to enhance their co-operation, in an effort to make the fight against fraud, corruption and any other criminal offence or illegal activity adversely affecting the European Communities' financial interests as efficient as possible and to avoid duplication of effort wherever possible,

HAVE AGREED

Chapter 1

Definitions and purpose of the Practical Agreement on arrangements of cooperation

Point 1

Definitions

For the purpose of this Practical Agreement on arrangements of cooperation:

- (1) "Eurojust Decision" means the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime¹;
- (2) "Rules of Procedure of Eurojust" means the Rules of Procedure of Eurojust²;
- (3) "Eurojust" means the unit set up by the Eurojust Decision;
- (4) "OLAF" means the European Anti-Fraud Office established by the Commission Decision of 28 April 1999³, carrying out the administrative investigation tasks set out in Council Regulation (EC) No 1073/1999⁴ and Council Regulation (Euratom) No 1074/1999⁵;
- (5) "President of the College" means the President as elected by the College, as referred to in Article 28 of the Eurojust Decision;
- (6) "Director of OLAF" means the Director, as referred to in Article 12 Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999;

¹ OJ L 63 of 6.3.2002, p. 1.

² OJ C 286 of 22.11.2002, p. 1.

³ OJ L 136 of 31.5.1999, p. 20.

⁴ OJ L 136 of 31.5.1999, p. 1.

⁵ OJ L 136 of 31.5.1999, p. 8.

- (7) "College" means the College of Eurojust, as referred to in Article 10 of the Eurojust Decision;
- (8) "Eurojust National Member" means the national member seconded to Eurojust by each Member State, as referred to in Article 2(1) of the Eurojust Decision;
- (9) "Assistant" means a person who may assist each Eurojust National Member, as referred to in Article 2(2) of the Eurojust Decision, unless defined otherwise in this Practical Agreement on arrangements of cooperation;
- (10) "Administrative Director" means the Administrative Director as referred to in Article 29 of the Eurojust Decision;
- (11) "Eurojust Staff" means the staff referred to in Article 30 of the Eurojust Decision;
- (12) "Competent OLAF Unit" means the unit within OLAF, whose tasks comprise, amongst others, liaising with national judicial authorities;
- (13) "OLAF Staff" means staff as referred to in Article 6(1) of Commission Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office (OLAF)¹;
- (14) "Data Protection Provisions" means, within Eurojust, the applicable data protection rules as laid down in the Eurojust Decision and the Rules of Procedure on the Processing and Protection of Personal Data at Eurojust², and, within OLAF, the Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data³;
- (15) "Personal Data" means any information relating to an identified or identifiable natural person: an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- (16) "Processing" of Personal Data means any operation or set of operations which are performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

² OJ C 68 of 19.3.2005, p. 1.

³ OJ L 8 of 12.1.2001, p. 1.

- (17) “Case Summary” means general information on a case dealt with either by Eurojust or OLAF and describing the main features of elements of the case, but without containing any Personal Data;
- (18) “Joint Investigation Team” means a Joint Investigation Team, as referred to in Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union¹ and in the Framework Decision 2002/465/JHA on Joint Investigation Teams².

Point 2

Purpose of the Practical Agreement on arrangements of cooperation

- (1) The purpose of this Practical Agreement on arrangements of cooperation is to enhance the fight against fraud, corruption or any other criminal offence or illegal activities affecting the European Communities’ financial interests and to define to this end the modalities for a close co-operation between the Parties. The co-operation will take place with due regard to transparency, complementarity of tasks and coordination of efforts.
- (2) This Practical Agreement on arrangements of cooperation does not modify any relevant legal rules and does not interfere with or amend the legal framework governing Eurojust or OLAF.

Chapter 2

Co-operation

Point 3

Regular contacts and co-operation

- (1) The Parties will maintain close and regular contacts. To this end, they will set up teams consisting for Eurojust of designated Eurojust National Members and/or their Assistants and for OLAF of the Competent OLAF Unit.

¹ OJ C 197 of 12.07.2000, p. 3.

² OJ L 162 of 20.06.2002, p. 1.

- (2) The teams will meet regularly, at least quarterly. The meetings will be chaired by a representative of each Party in rotation, on the basis of an agenda agreed on beforehand.
- (3) The teams will exchange Case Summaries in accordance with Point 5 and provide general feedback on the progress made and the activities performed in cases exchanged between the Parties with a view to reinforcing, if necessary, the co-operation.
- (4) Moreover, the meetings and further contacts between the teams are intended
 - (a) to reinforce common strategies on cases and to resolve practical problems in the co-operation which may arise from the application of this Practical Agreement on arrangements of cooperation;
 - (b) to consult on matters of common interest in order to allow the Parties to achieve their respective objectives and co-ordinate their activities;
 - (c) to support the development of priorities and strategies which are complementary to each other having regard to the priorities established in accordance with the respective legal framework of both Parties and the overall objective of enhancing the fight against fraud, corruption or any other criminal offence or illegal activities affecting the European Communities' financial interests within their respective competences;
 - (d) to identify individual or joint activities, if any, that need to be taken thereafter with a view to a more efficient and better use of the resources of the Parties;
 - (e) to help in coordinating the Parties' support and assistance of the national judicial authorities and of the authorities in charge of investigations and prosecutions.
- (5) If necessary to improve co-operation, the teams may invite other Eurojust National Member(s), their Assistants and/or Eurojust and OLAF Staff to take part in a meeting.
- (6) The designation of teams does not have any effect on direct contacts of OLAF Staff responsible for a specific case with one or more of the Eurojust National Members concerned and vice versa.

Point 4

General rules on operational co-operation

- (1) The Parties may collaborate in accordance with their respective competences and tasks either at the request of OLAF or on the initiative of Eurojust. This collaboration includes in particular the exchange of Case Summaries with a view to identifying appropriate cases requiring co-operation in accordance with Point 5, the exchange of operational information in accordance with Point 6, the participation in operational meetings in accordance with Point 8 and the provision of such mutual assistance and advice as may be useful to the Parties for the efficient and effective fulfilment of their respective tasks.
- (2) Before taking up collaboration with OLAF on a case concerning the protection of the European Communities' financial interests, Eurojust will verify in accordance with Article 26(3) of the Eurojust Decision that the competent authorities of the Member States concerned do not oppose the collaboration in such case.
- (3) Unless otherwise specified in this Practical Agreement on arrangements of cooperation, collaboration and any kind of communication will take place directly between the person(s) or, as the case may be, the College in charge of the case.

To this end, the Parties will promptly inform each other after having taken up collaboration of the competent person(s) or, as the case may be, the College in charge of the case and his/her/their contact details.

- (4) The Parties will inform each other of any action taken, responses received or other relevant developments or encountered difficulties in cases where they collaborate. This includes information on the decision to close or not to pursue a specific case.

Point 5
Exchange of Case Summaries

- (1) With a view to identifying appropriate cases for collaboration, the Parties will inform each other as soon as possible via the transmission of Case Summaries of the existence of any case dealt with under their respective competences where:
- in respect of Eurojust, it appears that the case is related to fraud, corruption or any criminal offence affecting the European Communities' financial interests;
 - in respect of OLAF, it appears that the case directly involves judicial co-operation between the competent national authorities of two or more Member States, or where the case concerns a Member State and the Community.

Unless otherwise stated when transmitting the Case Summary, the transmission of a Case Summary constitutes a request to the other Party (requested Party) to examine the necessity for close co-operation on a specific case.

- (2) As soon as the requested Party has decided that a specific case, for which a Case Summary was transmitted, requires co-operation:
- in respect of Eurojust, the College and/or the National Member(s) concerned;
 - in respect of OLAF, the Competent OLAF unit and/or the Director of OLAF and/or the OLAF Staff member responsible for the case

will inform the other Party of this decision without undue delay.

Information will also be provided when the requested Party decides that a case is not appropriate for co-operation.

- (3) Nothing prevents one Party from directly requesting the other Party to collaborate in a specific case without exchanging Case Summaries beforehand.

Point 6

Exchange of case-related information

- (1) When collaborating on a specific case, the Parties will exchange any necessary information, including personal data, in order to achieve the purpose of this Practical Agreement on arrangements of cooperation as set forth in Point 2. Any exchange of information takes place within the limits of their respective competences and as far as allowed under their respective legal framework and this Practical Agreement on arrangements of cooperation.
- (2) The Requesting Party will notify the other Party of the purpose for which the information is requested. In the case of a spontaneous transfer of information, the Party providing information will notify the other Party of the purpose for which the information is supplied.
- (3) Personal Data transmitted from OLAF to Eurojust will be transmitted:
 - directly to the College, when the case falls within the competence of the College; or
 - directly to the Eurojust National Member(s) concerned, when the case falls within the competence of one or more of the Eurojust National Members.
- (4) The respective Eurojust National Member(s) concerned with a case may transmit personal data to OLAF.
- (5) Information not containing Personal Data can be exchanged between the Parties also via other channels, in particular via the teams.

Point 7

Exchange of strategic information

Within the limits of their respective competences, the Parties will exchange strategic information necessary for the accomplishment of the missions of each Party, either spontaneously or on specific request. Strategic information may include:

- trends in criminality related to fraud, corruption or any other illegal activities affecting the European Communities' financial interests;
- operational structures of the organisations implicated in these activities, as well as the links existing between these organisations operating inside or outside the European Union;
- strategies, modus operandi, techniques and the financing of these organisations.

Point 8

Operational and strategic meetings

- (1) When operational meetings, organised by Eurojust, deal with cases the purpose of which is to co-ordinate investigations and prosecutions regarding the protection of the European Communities' financial interests, the participation of OLAF will, at the initiative of the Eurojust National Members concerned, be at the invitation of the President of the College.
- (2) OLAF may also participate in strategic meetings, organised by Eurojust, dealing with the protection of the European Communities' financial interests, at the invitation of the President of the College and with the approval of the Eurojust National Members concerned.
- (3) OLAF may also be invited by the President of the College to participate in operational and strategic meetings on its own request provided that the competent national authorities concerned do not oppose such participation.

- (4) Eurojust National Members and their Assistants, the Administrative Director, Eurojust Staff and, where appropriate, Liaison Magistrates and Liaison Prosecutors at Eurojust may also attend meetings organised by OLAF at the invitation of OLAF.

Point 9

Joint Investigation Teams

- (1) If either Eurojust or OLAF participates in a Joint Investigation Team set up by the Member States related to fraud, corruption or any criminal offence affecting the European Communities' financial interests, the Party will, when appropriate, inform the other Party and propose to the Member States to consider inviting the other Party to participate in the Joint Investigation Team.
- (2) The Parties may assist the Member States in the setting up of the Joint Investigation Team.
- (3) Eurojust and OLAF, acting separately or together, may recommend to the national authorities of the Member States the setting up of Joint Investigation Teams when the information they possess shows the usefulness of doing so.

Point 10

Co-operation in the field of professional training, seminars and workshops

The Parties will co-operate in the field of professional training, seminars and workshops:

- by informing each other of relevant activities which they organise and which may be of common interest, and, when appropriate, by inviting each other to these activities;
- by organising joint activities in this field.

Chapter 3
Protection of Personal Data

Point 11
General principles

- (1) The transmission of Personal Data between the Parties and their Processing will take place in accordance with:
- in respect of Eurojust, the Eurojust Decision and the Rules of Procedure on the Processing and Protection of Personal Data at Eurojust;
 - in respect of OLAF, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of Personal Data by the Community institutions and bodies and on the free movement of such data.
- (2) When transmitting the information, the Party may notify the other Party of any restriction on the use of the provided information. This includes possible access restrictions, restrictions on transmission to the competent authorities of the Member States and terms for deletion or destruction. Notification may also be given at a later stage, when the need for such restrictions becomes apparent after the transfer.
- (3) As far as allowed under the respective legal frameworks, the Parties may further process information obtained from the other Party under this Practical Agreement on arrangements of cooperation for the purpose of achieving the objectives of this Practical Agreement on arrangements of cooperation as set forth in Point 2.

Point 12
Documentation

Each Party will maintain a record of the transmission and receipt of Personal Data communicated to the other Party under this Practical Agreement on arrangements of cooperation.

Point 13
Data security

The Parties will inform each other of the technical measures and organisational arrangements, which they have taken in accordance with the respective law applicable to the Parties, to protect Personal Data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration, access or any unauthorised form of Processing. The Parties in particular ensure that only those authorised to access Personal Data can have access to such data.

Point 14
Rights of data subjects

The transmitting Party will be consulted by the other Party before it takes a final decision on the request by an individual to have access to, and to request the correction, blocking or deletion of, Personal Data concerning him transmitted under this Practical Agreement on arrangements of cooperation, in accordance with the applicable Data Protection Provisions of the Party to which the request is addressed.

Point 15
Correction and deletion of information

- (1) Each Party will immediately inform the other Party in all cases where information which has been transmitted to or received from that Party is corrected or deleted, stating the reasons. It will also inform the other Party in cases where it emerges that the information should not have been transmitted.

- (2) When the transmitting Party informs the receiving Party that it has corrected or deleted information previously transmitted, or that the information should not have been transmitted, the receiving Party will correct or delete the information accordingly.
- (3) When a Party has reason to assume that information received from the other Party is not accurate, or no longer up to date, it will inform the other Party. This Party will verify the data and inform the other Party of the outcome of such verification.
- (4) In cases where Personal Data received from a Party and transmitted onward to a third party is corrected or deleted afterwards, the onward transmitting Party will inform that third party thereof.

Point 16

Time limits for the storage of Personal Data

Personal Data will be stored in accordance with the respective laws applicable to the Parties.

Chapter 4

Final provisions

Point 17

Evaluation of co-operation

- (1) During the meetings of the teams set out in Point 3, the Parties will evaluate periodically the application of this Practical Agreement on arrangements of cooperation and the necessity for amendments.
- (2) The President of Eurojust and the Director of OLAF, or their nominees, will consult each other regularly on the application of this Practical Agreement on arrangements of cooperation. They will meet at least once a year to oversee the evaluation process conducted by the teams.
- (3) The Parties will provide information on their collaboration in their respective annual reports.

Point 18
Amendments

- (1) This Practical Agreement on arrangements of cooperation may be amended by mutual consent of the Parties at any time, provided that these amendments are approved in accordance with the procedures established for obtaining approval for this Practical Agreement on arrangements of cooperation.

- (2) The Parties will enter into consultations with respect to the amendment of this Practical Agreement on arrangements of cooperation at the request of either of them.

Point 19
Relation to other instruments

This Practical Agreement on arrangements of cooperation replaces the Memorandum of Understanding between Eurojust and OLAF, dated 14 April 2003.

Point 20
Entry into force

This Practical Agreement on arrangements of cooperation will enter into force on the first day after its signature.

Done at.....in two copies in the English language.

For Eurojust

For OLAF
