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COVER NOTE

from:	The General Secretariat of the Council
to:	Working Party on Cooperation in Criminal Matters
Subject:	Comments on Articles 27-37 of the Draft Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust)

On the 5 February 2014, the Working Party on Cooperation in Criminal Matters (COPEN) continued its examination of the Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust)[1]. At that meeting, delegations examined Articles 27-37 of the proposal.

At the end of the Working Party, delegations were invited to provide written comments on these articles to the General Secretariat of the Council by 28 February 2014. Six delegations; Austria, France, Germany, Hungary, Slovakia and the United Kingdom submitted comments which have been included in the Annex to this document.

[1] Doc 12566/13

Austria

General remarks

Austrian would like to point out its flexible approach with regard to the supervision of Eurojust in data protection matters, ie maintaining some kind **of Joint Supervisory Body versus** following the approach of the Commission's proposal (supervision by the **European DataProtection Supervisor**). However, if the majority of the Member States should like to maintain the Joint Supervisory Body it might – for the sake of efficiency and with regard to economic synergies – be worth thinking about creating an independent Joint Supervisory Body for all agencies and bodies of the EU dealing with criminal justice matters, ie Europol, Eurojust and the European Public Prosecution Office. As the negotiations for the Europol Regulation have already reached a rather advanced state it might as well be useful to discuss this matter in the next CATS meeting.

In general, the content of the current data protection regime, which the proposed Regulation intends to maintain, gives rise to serious concerns to the Austrian Delegation with regard to the workability in practice.

Article 27

Paras 1 and 2 refer to Annex 2 and thereby limit the scope of data to certain categories which may be processed by the National Members (NM). However, the categories mentioned in Annex 2 seem to be too narrow in particular concerning point 2 for witnesses, victims and even accused persons under the age of 18 (Art 27 para 2).

Re: Written comments by the Austrian Delegation regarding Articles 27 – 37 (Processing of information) of the proposal for the Eurojust Regulation

Concerning **perpetrators under the age of 18**, the Austrian Delegation would like to draw the attention to the fact that neither the proposal for a Directive of the European Parliament and the Council on procedural safeguards for children suspected or accused in criminal proceedings, COM(2013) 822, nor the proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10, contain special provisions on the processing of data concerning perpetrators under the age of 18. Therefore, the Austrian Delegations does not think that it would be reasonable to introduce special treatment for under aged perpetrators with regard to the regulation on Eurojust. Furthermore, Austria is of the opinion that the proposed provision would create serious problems in practical work for Eurojust and therefore supports the arguments made by Germany and France during the last COPEN working party.

Concerning the **victims and witnesses**, it would e.g. not be possible to process data of bank accounts. In cases of fraud, in which the perpetrator is still unknown, it might be crucial for the identification of a case, that more categories of data on the victim and the circumstances of the case can be processed in particular with regard to proceedings against unknown perpetrators, such as the bank account of the victim from which money was transferred fraudulently.

In times of electronic files the listed categories of data make work impossible as e.g. an automatic upload of data is not possible because the NM would have to check whether the data contained may be processed or not. It will therefore never be possible to establish an automatic upload of data contained in an exchange of Information according to Art 21 of the proposed Regulation. Moreover, if a public prosecution service submits a request for mutual legal assistance to Eurojust the NM has to check whether all data contained therein may be processed. If this is not the case it would mean that the processing and upload of such a request to the CMS would only be possible after deleting the parts of the mutual legal assistance request, which may not be processed. If some time afterwards the public prosecution service would request its NM to speed up the legal assistance proceedings in the respective Member State, the NM would have to forward a request in which parts of it where deleted. The procedures set out in paras 3 and 4 make work in practice even more inefficient and time consuming.

The Austrian delegation would like to point out that the procedures set out in para 4 would have to be followed in all cases of child pornography as data concerning health and sex life would have to be processed. Hence, before processing such data a decision of the College has to be taken. In this context the added value of a decision taken by the College doesn't seem to be very obvious. Furthermore Austria would like to support the comments made by Germany during the last COPEN working group as regards the terms "necessary" in para 1 and "strictly necessary" in paras 2 – 4. The difference between those terms is not clear and in general doubtful.

Article 28

Para 1 sets out different time limits for the storage of data. The Austrian delegation is of the opinion that it might be quite difficult in daily practice for the NM to review the data stored in the CMS in relation to the different time limits. It is not only necessary for the NM to know where the data came from as there are different time limits for information submitted in accordance with Art 21 and data submitted otherwise but also to know and constantly check e.g. whether a final decision has been rendered or became final in one of the concerned MS. Depending on the statement of Eurojust on this topic the Austrian Delegation would like to come back to this problem in a later stage of the negotiations.

In any case, the time limit of three years set out for information exchange according to Art 21 seems to be far too short and not in line with the tasks of Eurojust set out in Art 2, which states that Eurojust shall support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime. In particular with regard to the investigation of organised crime, proceedings might go on for ten years or even more. An information exchange according to Art 21 would prove to be quite useless in those cases and for national authorities maybe not even worth the effort. For Austria the notion of Art 21 was to create some kind of information hub and to thereby add value to investigations in other Member States. Given the short time limit for the storage of such data it is questionable if there is an added value of the system set out in Art 21 at all.

In order to meet national and European data protection requirements, in particular the requirement of proportionality, it seems worth thinking about limiting the scope of information exchange in Art 21 to cases of serious and organised crime and maybe as well some other categories (such as cited in Art 21 para 6) and extending the time limit for the storage of data in Art 28 para 1.

The short time limits are also contrary to the aim of establishing *ne bis in idem* situations in theEU at the earliest stage possible.

Finally, the reference made in para 1 lit e should be Art 21 paras 4 – 6; para 7 does not set out an obligation for authorities in the MS to exchange information but rather the contrary of such an obligation. With regard to para 3 Austria takes it that the data stored should be deleted immediately if no decision for further storage is reached. Therefore it might seem useful to delete the phrase “after three years” in the third sentence as it might give rise to misinterpretation.

Article 31

Austria supports the idea also expressed by other delegations during the last COPEN working party to have the Data Protection Officer appointed by the College as set out in Art 14 para 1 lit i.

France

I. Application of Regulation (EC) No 45/2001 to the processing of personal data by Eurojust

The French authorities support the idea that the principles established in Regulation (EC) No 45/2001 should apply to administrative personal data processed by Eurojust as well as to personal data on Eurojust staff.

However, we are opposed to the application of the provisions of Regulation (EC) No 45/2001 to operational data processed by Eurojust. The profoundly different nature of those data warrants maintaining a specific legal framework, with separate rules for data transfer, time-limits for storing data, the right of access, and the right to rectification and erasure. Their specific nature has already been acknowledged:

- in Declaration No 21 annexed to the Treaty of Lisbon[2],
- in recital 15[3] and Article 3(1) of Regulation (EC) No 45/2001;

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[2] Declaration on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation:

The Conference acknowledges that specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields.

[3] *"Where such processing is carried out by Community institutions or bodies in the exercise of activities falling outside the scope of this Regulation, in particular those laid down in Titles V and VI of the Treaty on European Union, the protection of individuals' fundamental rights and freedoms shall be ensured with due regard to Article 6 of the Treaty on European Union. Access to documents, including conditions for access to documents containing personal data, is governed by the rules adopted on the basis of Article 255 of the EC Treaty the scope of which includes Titles V and VI of the Treaty on European Union. "*

Moreover, there is also a need to ensure consistency:

- with the provisions of the proposal for a Europol Regulation, recital 32 of which acknowledges the specific nature of the rules applicable to the processing of operational personal data: "*As Declaration 21 attached to the Treaty recognizes the specificity of personal data processing in the law enforcement context, the data protection rules of Europol should be autonomous and aligned with other relevant data protection instruments applicable in the area of police cooperation in the Union, in particular Convention No. 108 and Recommendation No R(87) of the Council of Europe and Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [to be replaced by the relevant Directive in force at the moment of adoption].* " That analysis was subsequently confirmed by the Council Legal Service in its opinion of 10 December 2013 (ST 17615/13 JUR 643).
- with the legal framework applicable to the processing of operational data by the Member States: it would be hard to justify having the same operational data governed by two separate legal frameworks, depending on whether they were processed by the Member States or by Eurojust.

The provisions of the draft Eurojust Regulation should therefore reflect the distinction between administrative and personal data, which means applying two separate legal regimes.

We would suggest wording Article 27(5) as follows: *"The processing of administrative personal data by Eurojust shall be carried out in accordance with Regulation (EC) No 45/2001. Specific rules set out in this Regulation shall apply to the processing of operational personal data. "*

This distinction could also be reflected in Article 31 on the powers of the Data Protection Officer: while the Administrative Director's involvement, as provided for in paragraph 5, makes sense where there has been failure to comply with the rules on the processing of administrative data, it is harder to justify where operational data are concerned.

II. Choice of authority responsible for monitoring compliance with data protection rules

On the issue of monitoring compliance with the rules on the protection of personal data, our top priority is to ensure that the specific nature of the personal data processed by Eurojust in the course of its judicial and operational activities is taken into account adequately and with the necessary expertise, in accordance with Declaration No 21 annexed to the Treaty of Lisbon.

Since the Joint Supervisory Body of Eurojust was set up, it has developed real expertise in this area, and has always taken into account the special nature of Eurojust's operational activities which means that Eurojust functions differently than other EU agencies. Furthermore, the composition of the Joint Supervisory Body (made up of judges or persons holding an office giving them sufficient independence, in accordance with Article 23 of the consolidated Eurojust Decision) ensures that this expertise is available and meets the independence requirement imposed by Article 16 TFEU. Regarding the other guarantees advocated by the Council Legal Service, we are aware that such safeguards will have to be provided, in accordance with procedures that have yet to be determined.

If it is not possible to retain the competence of the current Joint Supervisory Body established by Article 23 of the consolidated Eurojust Decision, we would like to maintain an *ad hoc* body tasked with the supervision of operational data.

Either way, we would like the supervisory authority which is responsible for monitoring Eurojust's compliance with data protection rules to be the same authority as that which has similar responsibilities for Europol. That is our second priority. If selecting the European Data Protection Supervisor allowed that objective to be achieved, we could support that option as an alternative.

The budget savings achieved by having a single authority might also make us more inclined to empower the European Data Protection Supervisor, again subject to the proviso that the particular nature of the personal data processed by Eurojust in the context of its judicial and operational activities is taken into account (see above).

Germany

General remarks

The repeated **references to Regulation No. 45/2001** in Chapter IV of the Eurojust Regulation do **not** seem **appropriate**, at least as regards operational personal data. The Regulation does not take account of the specific data protection requirements in the field of cross-border criminal prosecution and also no longer appears to be an appropriate frame of reference in view of the current EU reform projects in the area of data protection. In this regard, please also see the comment of the JSB of Eurojust dated 6 December 2013, Council document 17419/13, p. 4.

Moreover, making repeated references to a legal instrument is, in our opinion, not sufficiently transparent and user friendly. **It should become clear from the Eurojust Regulation itself which data protection rules apply with regard to Eurojust.** In particular, it must be possible for citizens to clearly recognise what legal remedies are available to them in the case of data protection violations. Otherwise, the goal of the rules contained in Chapter IV of the Eurojust Regulation, i.e. to guarantee appropriate data protection, would be called into question since a lack of comprehensibility and transparency in a legal instrument leads to errors in its application.

Germany is in favour of **retaining the JSB of Eurojust**. The institution of the JSB takes account of the specific ("hybrid") structure of Eurojust. Moreover, the JSB has specific knowledge in the field of data protection that is tailored exactly to the needs and requirements of Eurojust's work. The JSB's work has proven very successful in the past years, and no reasons have arisen that would justify doing without the JSB's special know-how and experience in the future. Also involving the European Data Protection Supervisor would be an option if the JSB were unable to resolve (at all or within an appropriate time limit) legal protection matters – especially those where citizens want to exercise their right to information or deletion ("two-stage model").

Article 27

a. re paragraph 1:

Paragraph 1 stipulates which personal data Eurojust may process. However, like Article 14 para. 1 of the Eurojust Decision, the provision's scope of application is limited to data that are processed by automated means or in structured manual files. During the COPEN meeting on 5 February 2014, the Commission explained upon request that personal data processed by non-automated means or in non-structured files also were to fall within the scope of application of Chapter IV of the Eurojust Regulation. If this is the case, the text of Article 27 of the Eurojust Regulation must be adapted accordingly.

The list in Annex 2 seems to require review. A fax number and IT information might be added under letter I. Moreover, a sentence should be included in Annex 2 to clarify that the processing of all information listed in Annex 2 must be necessary in order for Eurojust to fulfil a specific task.

b. re paragraph 2:

We have a critical view of the restriction of data processing in relation to persons under the age of 18 that is provided for in the first sentence. It may make sense to exclude data of persons under the age of criminal liability (in GER: minors under the age of 14) from comprehensive storage. However, it does not appear appropriate to waive the storage of data related to minors who have reached the age of criminal liability and who have been suspected or accused of an offence. In Germany's view, the criterion of necessity should therefore equally apply to all personal data that are to be processed with regard to suspected or accused persons.

c. re paragraph 3:

Especially in relation to paragraph 1, it does not become sufficiently clear from this provision which case constellations are to be covered that are not already covered by paragraph 1. A more detailed definition of the exceptional cases covered by paragraph 3 should be provided here.

d. re paragraph 5:

We have a critical view of the reference to Regulation 45/2001, as we have pointed out above in our general remarks. The Draft Europol Regulation does not contain a general reference to Regulation 45/2001 either, but rather refers to it only with regard to administrative personal data and personal data of staff members. Other than that, reference is made to the Framework Decision on the protection of personal data (which is to be replaced in future by the Data Protection Directive). In this respect, the provisions of the Europol and Eurojust Regulations should be brought into harmony.

Moreover, the general reference to Regulation 45/2001 raises questions since Chapter IV of the Regulation Proposal already contains numerous special rules. It is therefore very difficult for those applying the law to recognise whether a special rule in the Eurojust Regulation is conclusive or not. All relevant data protection provisions that apply to Eurojust should be directly included within the Eurojust Regulation.

Article 28

a. re paragraph 1:

There is no general rule saying that Eurojust may store personal data only for as long as this is necessary for achieving its aims; the previous provision of Article 21 para. 1 of the Eurojust Decision was not included in the Regulation's text. It does not appear sufficient to anchor the criterion of necessity in Article 27 para. 1 of the Regulation Proposal; a clear provision should be made in Article 28 since all time limits provided for there are pointless if it already becomes clear at an earlier point in time that it is no longer necessary for Eurojust to store the respective personal data. In this regard, please also see the comment of the JSB of Eurojust, Council document 17419/13, p. 12.

The chapeau of the provision lacks an insertion such as “subject to the decision pursuant to paragraph 3”. Otherwise, a decision pursuant to paragraph 3 would violate the Regulation.

b. re paragraph 3:

Pursuant to the newly inserted third sentence, personal data with regard to which no decision is taken on the continued storage are to be deleted only after another three years. This provision is not convincing since it automatically extends the time limits for deletion set out in Article 28 para. 1 by another three years. The Eurojust Decision does not provide for a similar rule. Therefore, we request that the third sentence be deleted.

The fourth sentence should be deleted as well. If prosecution were statute barred in all Member States, it is not clear in the prosecution of which criminal offences Eurojust could provide assistance.

c. re paragraph 4:

In order to secure the rights of the person concerned , Eurojust's Data Protection Officer should first examine each decision on the continued storage of personal data in accordance with paragraph 3. In particular, a review of the first decision regarding continued data storage should take place at Eurojust. This should be expressly made clear in the text of the Regulation.

Pursuant to the Commission's proposal, further examination pursuant to paragraph 4 is to be conducted by the European Data Protection Supervisor (EDPS). However, it is unclear whether the EDPS has sufficient insight into the operational aspects of each individual case. Moreover, involving the EDPS at this stage seems too inflexible and impractical overall.

Pursuant to Article 23 of the Eurojust Decision, until now it has been the task of Eurojust's JSB to monitor the practical application of Article 21 (among others). Due to its proximity to Eurojust's operational functions and its years of practical experience, it appears appropriate that the JSB be involved at this stage in the future as well (see our general remarks above). Therefore, Germany is in favour of retaining the JSB and advocates that the JSB continue to carry out its previous tasks.

Article 31

a. re paragraph 1:

The Eurojust Data Protection Officer should be appointed not solely by the Executive Board, but by the entire College. Appropriate data protection is an issue which is directly linked to Eurojust's operational functions; as such, involvement of the College is necessary and appropriate.

b. re paragraph 2:

It appears that the Eurojust Data Protection Officer's tasks are intended to fall behind those set out thus far in Article 17 para. 2 of the Eurojust Decision. There is no discernible reason for this. We would request that this provision be reviewed.

Moreover, the reference to Regulation 45/2001 does not make it clear whether the tasks under Article 32 para. 2 of the proposal supersede the tasks under Article 24 of Regulation 45/2001, or whether they apply in addition. This requires clarification.

c. re paragraph 5:

It does not seem appropriate that, in the event of non-compliance with data protection provisions, the Eurojust Data Protection Officer should initially inform only the Eurojust Administrative Director, whereas the Eurojust College is to be informed only if the Administrative Director does not resolve the non-compliance. The operational functions of Eurojust depend critically on the proper handling of data and compliance with the necessary data protection provisions. Therefore the College must be involved at an early stage, as has been the case thus far (Article 17 para. 4 of the Eurojust Decision); this enables it to inform the national authorities, if necessary, in the event of non-compliance.

Regarding the issue of whether the JSB of Eurojust is to be replaced by the European Data Protection Supervisor, we make reference to our general remarks. The JSB should be retained and continue to be involved at this stage Only if the JSB does not resolve the non-compliance, the European Data Protection Supervisor could be involved as a further level of escalation ("two-stage model").

d. re paragraph 6:

The reference to Regulation 45/2001 raises questions. Which implementing provisions are to apply to Eurojust? This must be clear from the Eurojust Regulation itself.

Article 32

a. re paragraph 3:

This provision appears to require revision. The procedure between Eurojust and the Member States must be clear and transparent, for example with regard to time limits for participation and voting ratios.

b. re paragraph 4, second sentence

It would seem appropriate to include a provision which corresponds, for example, to current Article 19 para. 7 of the Eurojust Decision ("without giving any information which could reveal whether or not the applicant is known").

c. re paragraph 4, third sentence

This provision requires revision. It is still unclear why the European Data Protection Supervisor (EDPS) comes into play here, especially since Article 32 para. 7 of the proposal apparently presumes merely an optional verification by the EDPS. Does Eurojust have to involve the EDPS if use is made of the possibility to omit the information about the principal reasons, provided for in para. 4, second sentence? The provision must clearly state what is intended.

Furthermore, the proposal should also govern who is to provide the information to the person making the request: Eurojust or the EDPS?

d. re paragraph 6, second sentence:

The relationship between the time limit provided for in the second sentence and the time limit under Article 32 (2) appears to be unclear (double rule?).

e. re paragraph 7:

This provision needs to be amended. The reference to Regulation 45/2001 does not make it clear in which cases and on whose initiative the European Data Protection Supervisor is or must be involved.

Article 33 paras. 5 and 6:

Paragraph 5 presupposes that the data subject has made a "request"; however, the Eurojust Regulation thus far does not contain any regulation on such requests. Article 32 of the proposal merely refers to a request for access, but not for correction, deletion or blocking. It is not clear whether para. 6 refers to para. 5; this needs to be clarified.

Article 34 para. 3, first sentence

This provision requires revision. It does not seem appropriate provide for a "responsibility for compliance with Regulation (EC) No. 45/2001". What is at issue here is compliance with obligations governed by the Eurojust Regulation.

Article 35 para. 1

It is unclear which specific issues are covered here; thus, it appears that this provision requires revision.

Regarding the general issue of whether the JSB of Eurojust is to be replaced by the European Data Protection Supervisor, we make reference to our general remarks.

Article 36 para. 1

The right to lodge a complaint must be governed by the Eurojust Regulation itself. A reference to Regulation 45/2001 is difficult to understand and is thus not very citizen- or user-friendly.

In addition, it is surprising that the decision of the EDPS is to be made in consultation with the national authorities, but not in consultation with or, in any case, after hearing **Eurojust** or the **JSB** (should these remain in charge as the first "supervisory body", as proposed by Germany); after all, it is Eurojust and JSB who are responsible for decisions under Articles 32 and 33. Therefore, the entire provision seems to require revision.

Article 37

It is still necessary to evaluate whether, in accordance with Article 19 of the Framework Decision 2008/977/JHA, a provision should be introduced whereby the recipient cannot cite in its defence that the transmitting authority was at fault. The allocation of responsibility is not transparent for the persons concerned; they run the risk of having to institute two proceedings which might possibly result in contradictory decisions.

Hungary

The successful cooperation – consisting of information exchange in concrete criminal cases - between Eurojust and the Member States is – mostly – based upon the powers of the National Members and the current tailor-made data protection regime which corresponds with the operative needs and mandate of Eurojust.

In our opinion, the task of Eurojust is a perfect example for Declaration 21 of the Lisbon Treaty on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation, which acknowledges that: *"... **specific rules on the protection of personal data** and the free movement of such data in the **fields of judicial cooperation in criminal matters** and police cooperation based on Article 16 of the Treaty on the Functioning of the European Union **may prove necessary** because of the specific nature of these fields."*

Applicability of Regulation No 45/2001 – differences to the Europol Regulation

As opposed to the current regime, Recital 20 of the Regulation clearly states that the processing of personal data falls under the scope of Regulation 45/2001, which **was originally designed for the first pillar** and was adopted for regulating the processing of personal data, mostly staff data, and now it should apply to a body exclusively active within the area of police and criminal justice cooperation.

Recital 15 of this Regulation acknowledges the above mentioned reasoning by explicitly stating that the activities within the ex-third pillar falls outside the scope of the Regulation.

However, the Hungarian delegation accepts that instruments laid down by the common approach should be applicable for Eurojust, and so for the data protection, but **only in regard of staff, financial or other administrative data.**

The very same approach seems to be laid down in Recital 32 of the **Europol Regulation** - citing the above mentioned Declaration 21 to the Lisbon treaty, since it clearly states that data protection rules of Europol should be autonomous and aligned with other relevant data protection instruments applicable in the area of police cooperation.

The text of the recital 34 foresees an obligation for Europol to make distinctions between personal data of different categories of data subjects as clear as possible (hence the different data protection regime for each category), and in accordance with Recital 43 of Europol draft Regulation, processing of non-operational personal data, not related to any criminal investigations, should be subject to Regulation (EC) No 45/2001.

Although the general data protection principles are the same in the Regulation No 45/2001 as in the current data protection regime, there are a number of substantial differences, which make certain provisions (for example processing of data relating to suspected offences, criminal convictions shall be subject to a prior check) not suitable for the task of Eurojust.

Furthermore, there are numerous internal legal instruments – for example the Data Protection Rules and Eurojust Security Rules – applicable to case-related data processed within the CMS and manual files, but the Regulation makes no reference to these, whereas these internal legal instruments are responsible for the robust and adequate data protection regime, without these the proposed regime does not reach the current level of protection.

As previously stated at the COPEN meeting on February 5th, 2014, the Hungarian delegation would like to seek clarification from the Commission, why propose an entirely different data protection regime for two bodies active within the area of police and criminal justice cooperation, whereas the Commission's main goal seems to be the uniformity of the data protection regimes of the Union bodies.

Article 27 para 3

The scope of the exceptional cases should be further defined.

Article 28 para 1

We suggest to further define the purposes of data storage, and to consider its necessity as well.

Article 31 para 1

The DPO – based on the provisions of Regulation No 45/2001 - shall be appointed to a maximum of 10 years, but considering that the function requires a high level of expertise and continuity, the Hungarian delegation suggests to eliminate the justification to limit the appointment to a maximum of 10 years, as it is presently the case in Regulation 45/2001.

Article 31 para 5

The introduced escalation procedure – in our opinion – is acceptable in case of administrational data, but it is not clear what exactly would be the role of the administrative director if it comes to operative data.

Article 32 para 1,4

Regarding the right of access it is questionable whether the deadlines allow the effective exercise of rights and the eventual processing of complaints, since the data subjects – in extreme cases – have to wait 4 months for the requested information. Furthermore, the Member State has another 1 month to refer the case to EJ.

It has to be clarified, whether the provisions in para 1 are to understood in the way that the request can only be submitted by a national authority of the member state, or it can directly be submitted by EJ, since the general rule set in Art. 13 of Regulation 45/2001 / EC ensures that the data subject can submit the request directly to the EU institute processing the data, and a deadline of 3 months are established for processing such request.

Any data subject wishing to exercise the right of access to personal data may make a request to that effect to the national authority appointed for this purpose, which refers the request to Eurojust. Should the request of the data subject concern a criminal procedure, the data subject is informed of the international coordination on EU level as well as of investigative tactics used in the criminal procedure.

Article 33

Para 5 foresees a deadline of 3 months of the receipt of the request for informing the data subject that data concerning him or her have been rectified, erased or their processing restricted.

Para 6, however, does not set any deadline for informing the data subject on any refusal of rectification, of erasure or of restrictions to the processing. The provisions of the article do not contain any deadline regarding the decision of Eurojust on the request for rectification, of erasure or of restrictions to the processing.

The lack of provisions setting deadlines hinder the effective exercise of rights and processing of complaints.

The Hungarian delegation suggest to add provisions regarding the length of the procedure of Eurojust regarding such requests and that Eurojust be obliged to inform the data subjects of its decision within a reasonable timeframe.

Article 34 para 2

In accordance with the provision, the responsibility for the quality of personal data shall lie with the Member State which provided the personal data to Eurojust and with Eurojust for personal data provided by EU bodies, third countries or international organizations, as well for personal data retrieved by Eurojust from publicly available sources.

All cooperation agreements concluded by Eurojust with third States and international organization include provisions concerning the duty of each Party to ensure the correctness of the sent information, and the liability regarding any damage as a result of erroneous information, **lies with the Party, which submitted the information.**

The same responsibility attribution is embodied in the Directive 95/46/EC12, and in the Framework Decision 2008/977/JHA on the protection of personal data processed within the area of police and judicial cooperation in criminal matters.

Moreover, the text of Article 16 of Eurojust Data Protection Rules – the proposal makes no reference to this instrument – is as follows:

"When information is transmitted to Eurojust by a Member State or an external party in the context of an investigation or prosecution, it shall not be responsible for the correctness of the information received but shall ensure, from the moment of reception, that all reasonable steps are taken to keep the information updated."

Therefore, the Hungarian delegation suggests aligning the liability for the sent information with the existing international agreements and regimes.

Slovakia

General remarks

In the area of data protection, the Slovak Republic proposes to take into account the specific judicial nature of Eurojust as well as the fact that while changing legal form (regulation), the fundamental tasks thereof are not modified i.e. to motivate improvement of coordination and co-operation between competent judicial authorities of the **Member States,** in particular in relation to serious crime. This fact is confirmed on several occasions in the Preamble as well, since it emphasizes that the Eurojust's main task is to support and strengthen coordination and co-operation between domestic authorities responsible for investigation and prosecution of serious crime, involving two or more Member States or requiring criminal prosecution on common basis. As a rule, data do not originate from Eurojust itself, but they are forwarded from and transmitted to Member States since data are collected and transmitted for the purposes of pending criminal proceedings in different Member States.

System of protection of personal data may not create an obstacle preventing from achieving Eurojust's objectives and fulfillment of tasks by judicial authorities of different Member States. The scope (amount) of data processed as well as deadlines should be adapted so that objectives are possible to achieve.

The Slovak Republic prefers the existing system of data protection in Eurojust, since it proved well and has been guaranteed by persons coming from judicial area. On the other hand the Slovak Republic is prepared to consider any other possibility as well given that it will be combined with existing model.Rules concerning protection of personal data should be defined in a clear and understandable manner.

Article 27

Based on grounds specified in General remarks, the Slovak Republic does not support direct application of Regulation 45/2001 to operative activities of Eurojust i.e. the Article 27(5) and subsequent provisions referring to application of the regulation. The Slovak Republic would welcome the Commission's explanation concerning diverse specification of the issue in the draft Regulation on Europol.

Article 31

The Slovak Republic is pointing out inconsistency between Article 31(1) (official responsible for protection of personal data shall be appointed by Executive Board) and Article 14 i) (under this provision, the official responsible for protection of personal data shall be appointed by the College). It is necessary to remove this inconsistency and wording of the above specified Articles should be harmonized.

Article 34(2)

The Slovak Republic does not consider proper the idea that Eurojust should be accountable for quality of data transmitted to it from other partners, especially third countries. Eurojust does not have any real possibility to influence the quality of such data, since it does not generate them.

UK

Article 27

We are concerned that the applicability of Regulation 45/2001 creates extraordinarily onerous burdens on National Desks. Our view is that judicial co-operation bodies should not be under the same data protection regimes as administrative bodies.

We consider that Regulation 45/2001 should only apply to administrative processing, and not to operational casework. For example, the rights of access of the data subject (Article 11 of 45/2001) would create substantially onerous burdens on National Desks. At the recent EuroJust meeting of the Consultative Forum of Prosecutors General, this view was very strongly endorsed by practitioners.

In addition, Article 27 must be read in conjunction with the Annex 2. We are concerned that the limited nature of Annex 2 point too is overly restrictive in terms of processing of data on victims and witnesses. By way of example, we might consider a case concerning boiler room fraud which included targeting elderly persons, some of whom may be very vulnerable. In the event that a Mutual Legal Assistance (MLA) request needed to include details of bank accounts and email addresses of those defrauded to enable enquiries to be carried out it would not be possible for Eurojust to transmit and assist in facilitating its execution. Another example would be an MLA request relating to a murder case where, for example, the perpetrator gained control of the victim's bank account using her social security number and identity documents - Annex 2 would not permit details of a murder victim's social security number/bank account/identity documents to be processed by Eurojust so they could not transmit or facilitate its execution.

Although Article 27(3) does contain exceptions, it is not clear that this enables mutual legal assistance requests containing the abovementioned data to be processed. Moreover, in co-ordination cases Article 27(3) creates an onerous obligation on National Members, particularly in relation to personal data concerning victims.

Article 32

Please see our comments under Article 27 as this creates significantly onerous burdens in complying with this obligation.

Article 33

We have similar concerns about the burden of National Desks having to comply with the obligation to rectify, erase or restrict given the requirement for this to be done in "collaboration" with the MS concerned.

Article 34

No comments at this point.

Article 35

Our core concern on this issue, as with Europol, is to ensure that the expertise of the Joint Supervisory Body is not lost. We would welcome thematic discussions on the possible options.

Article 36

As far as we can see, there does not appear to be any appeal route against a decision of the EDPS set out in the proposed Regulation. Would the parties concerned need to lodge an appeal with the national courts/tribunal?

It would be helpful if the Commission could set out what they had in mind here.