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**NOTE**

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from:	Presidency
to:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) - Discussion paper

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At the COPEN meeting on 5th February, delegates examined Chapter IV of the draft Regulation dealing with data protection and the transfer of personal data at Eurojust. At that meeting, the European Commission outlined its proposal and explained the rationale behind each of the provisions.

Whilst many delegations could accept the need to strengthen the data protection regime of Eurojust drawing on the principles underpinning Regulation (EC) 45/2001, many queried whether Regulation (EC) 45/2001 should apply to *all* data processed by Eurojust noting that a different approach has been taken with the Europol Regulation where a distinction is made between operational and administrative personal data for the purposes of the application of Regulation 45/2001. Several delegates stressed the need to ensure that the data protection regime at Eurojust is aligned with the data protection regime of Europol and EPPO.

Some delegations also opined that the current data protection regime at Eurojust which consists of specific data protection rules monitored by a Data Protection Officer (DPO) and a Joint Supervisory Body (JSB), is sufficiently robust and works well in practice. These delegations would prefer to retain the JSB in some form in this new Regulation. Delegations were reminded that the CLS addressed this issue in a written contribution (doc. 17615/13) in the context of the Europol Proposal.

Delegates were also advised that the Law Enforcement Working Party (LEWP) is currently examining a revised draft of the Europol proposal which incorporates some of the amendments on the supervisory aspects of the data protection provisions voted by the European Parliament<sup>1</sup>. The Presidency expects to agree a general approach of the Council on the Europol Regulation at the JHA Council in June 2014.

In light of the complexity of the issue and the need to ensure an effective data protection regime at Eurojust, the Presidency agreed to facilitate a thematic discussion on this topic at the COPEN meeting of the 13th March. This discussion paper outlines some key questions linked to the issues raised by delegates at the February meeting and the subsequent written comments submitted to the Presidency.

### **1) Processing of personal data**

Article 27 of the Proposal provides that Regulation (EC) No 45/2001 should apply to the processing of personal data by Eurojust. It specifies the categories of personal data which can be processed by Eurojust in relation to suspects, witnesses and victims in an Annex. It also describes some exceptional cases where data other than those referred to in the Annex can also be processed for a limited time.

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<sup>1</sup> Ref: docs. 5478/14 and doc. 7080/14 (to be issued).

*1. Do delegates consider that Regulation (EC) no 45/2001 should apply to operational personal data processed by Eurojust? If so, for reasons of legal certainty, should a definition of operational data be introduced along the lines of the EDPS opinion?*

*2. Do delegates consider that the categories of data listed in Annex 2 are sufficient to allow Eurojust to carry out its operational functions?*

*3. Do delegates consider that Article 27(3) adequately captures the types of exceptional cases where Eurojust may need to process data beyond the categories provided in the Annex, taking into account the principle of data minimisation included in the data protection reform package?*

## **II) Supervision mechanism**

The draft Regulation introduces a significant change in the supervision mechanism at Eurojust. It establishes the responsibilities of the European Data Protection Supervisor (EDPS) as regards the monitoring of all personal data processing at Eurojust. The EDPS meets the following requirements: its complete independence is ensured (in line with the interpretation given by the Court of Justice inter alia in cases C-518/07 and C-614/10), it is vested with effective enforcement and sanctioning powers (has the authority to autonomously adopt legally binding decisions effectively enforceable against the supervised agency) and it is subject to effective judicial review (as required by Article 47 of the Charter). On that basis, the EDPS will take over the tasks of the JSB established under the Eurojust Council Decision.

*4. Do delegates consider that the supervisory model envisaged in the proposal is appropriate for Eurojust, taking into account the possibility to introduce in the draft Eurojust Regulation an improved cooperation mechanism between the EDPS and national supervisory authorities drawing inspiration from the latest draft of the Europol Regulation?*