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**NOTE**

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From:	Presidency
To:	Delegations
No. prev. doc.:	5142/15 EUROJUST 2 EPPO 1 CATS 1 COPEN 2 CODEC 26
No. Cion doc.:	12566/13 EUROJUST 59 EPPO 4 CATS 36 COPEN 109 CODEC 2163
Subject:	Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) - Text of the Recitals

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Delegates will find the text of the Recitals as revised by the Presidency to take account of the negotiations to date.

Revised text and additional Recitals included as part of the partial general approach are highlighted in ***bold italics***, deleted text is indicated in ~~strike through~~ and additional text is included in **bold**.

**The Presidency invites delegates to submit written comments by cob Monday 9th February and will prepare a revised text to take account of any comments received in advance of the Copen meeting of 13th February.**

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the European Union Agency for Criminal Justice Cooperation (Eurojust)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 85 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

~~After consulting the European Data Protection Supervisor,~~

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Eurojust was set up by Council Decision 2002/187/JHA<sup>1</sup> as a body of the European Union with legal personality to stimulate and to improve coordination and cooperation between competent judicial authorities of the Member States, particularly in relation to serious organised crime. Council Decision 2003/659/JHA<sup>2</sup> and Council Decision 2009/426/JHA<sup>3</sup> on the strengthening of Eurojust amended Eurojust's legal framework.

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<sup>1</sup> OJ L 63, 6.3.2002, p. 1.

<sup>2</sup> OJ L 245, 29.9.2003, p. 44.

<sup>3</sup> OJ L 138, 4.6.2009, p.14.

- (2) Article 85 of the Treaty provides for Eurojust to be governed by a regulation, adopted in accordance with the ordinary legislative procedure. It also requires determining arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.
- (3) Article 85 of the Treaty also provides that Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

(3a)<sup>4</sup>

**(3b) This Regulation aims to amend and expand the provisions of Decision 2002/187/JHA and 2009/426/JHA. Since the amendments to be made are of substantial number and nature, this Decision should in the interests of clarity be replaced in its entirety in relation to the Member States bound by this Regulation.**

- [(4) Since the European Public Prosecutor's Office should be established from Eurojust, this Regulation includes the provisions necessary to regulate the relations between Eurojust and the European Public Prosecutor's Office.
- (5) Whilst the European Public Prosecutor's Office should have exclusive competence to investigate and prosecute crimes affecting the Union's financial interests, Eurojust should be able to support national authorities when they are investigating and prosecuting these forms of crime in accordance with the Regulation establishing the European Public Prosecutor's Office.]<sup>5</sup>
- (6) In order for Eurojust to fulfil its mission and develop all its potential in the fight against serious cross-border crime, its operational functions should be strengthened by reducing the administrative workload of national members, and its European dimension enhanced through the Commission's participation in the ~~management of the agency~~ **Executive Board** and the increased involvement of the European Parliament and national Parliaments in the evaluation of its activities.

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<sup>4</sup> now (9a)

<sup>5</sup> Recitals 4 and 5 may be deleted depending on the outcome of CATS 10th February.

- (7) Therefore, ~~Council Decision 2002/187/JHA should be repealed and replaced by this~~ Regulation **should** determine~~ing~~ arrangements for parliamentary involvement, modernising its structure and simplifying Eurojust's current legal framework, whilst maintaining those elements that have proven to be efficient in its operation.
- ~~(8)<sup>6</sup> This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.~~
- (9) The forms of serious crime affecting two or more Member States for which Eurojust is competent should be laid down. In addition, cases which do not involve two or more Member States, but which require a prosecution on common bases, should be defined. Such cases should include investigations and prosecutions affecting only one Member State and a third State, as well as cases affecting only one Member State and the Union.
- (9a) Prosecution on a common bases refers to cases of prosecutions and investigations which may affect only one Member State and a third country where an ~~cooperation~~ agreement has been concluded or where there may be a specific need for Eurojust's involvement. It may also refer to cases which affect one Member State and the Union.<sup>7</sup>*
- (10) When exercising its operational functions in relation to concrete criminal cases, at the request of competent authorities of Member States or on its own initiative, Eurojust should act either through one or more of the national members or as a College. ***By acting on its own initiative Eurojust may take a more proactive role in co-ordinating cases such as supporting the national authorities in their investigations and prosecutions. This may include involving Member States who may not have initially been included in the case and discovering links between cases based on the information it receives from Europol, OLAF and ~~other~~ national authorities in accordance with ~~Article 21~~. It also allows Eurojust to produce guidelines, policy documents and casework related analyses as part of its strategic work. When acting on its own initiative it should do so in accordance with this Regulation<sup>8</sup>.***

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<sup>6</sup> Moved to (39b).

<sup>7</sup> Formerly Recital 3a of the partial general approach.

<sup>8</sup> Additional text agreed in Partial General Approach.

**(10a) At the request of a Member State's competent authority or the Commission, Eurojust may also assist investigations involving only that Member State but which have repercussions at Union level. *Examples of cases which have repercussions at Union level include those where a member of an EU institution or body is involved. It also covers cases which involve a significant number of Member States and could potentially require a coordinated European response.***<sup>9</sup>

(11) To ensure Eurojust can appropriately support and coordinate cross-border investigations, it is necessary that all national members have the same operational powers in order to cooperate between themselves and with national authorities in a more effective way. National members should be granted those powers that allow Eurojust to appropriately achieve its mission. These powers should include accessing relevant information in national public registers, ~~issuing and executing mutual assistance and recognition requests, and~~ directly contacting and exchanging information with competent authorities, ~~participating in joint investigation teams and, in agreement with the competent national authority or in case of urgency, ordering investigative measures and controlled deliveries.~~

**(11a) In addition, national members may, in agreement with the competent national authority or in case of urgency, order investigative measures and controlled deliveries, issue and execute mutual assistance and recognition requests and participate in joint investigation teams. In principle, however, these powers should be exercised by the competent national authority.**<sup>10</sup>

(12) It is necessary to provide Eurojust with an administrative and management structure that allows it to perform its tasks more effectively and respects the principles applicable to Union agencies whilst maintaining Eurojust's special characteristics and safeguarding its independence in the exercise of its operational functions. To this end, the functions of the national members, the College and the Administrative Director should be clarified and an Executive Board established.

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<sup>9</sup> Recital 10a is part of Partial General Approach.

<sup>10</sup> It was agreed in the Partial General Approach that a recital to this effect would be included.

- (13) Provisions should be laid down to clearly distinguish between the operational and the management functions of the College, reducing the administrative burden on national members to the minimum so that the focus is put on Eurojust's operational work. The management tasks of the College should include in particular the adoption of Eurojust's work programmes, budget, annual activity report, appropriate financial rules, and working arrangements with partners. It should exercise the power of appointing authority towards staff of the agency including the Administrative Director. **The College should also adopt the Rules of Procedure of Eurojust. Since those rules may have an impact on the judicial activities of the Member States, it is of the utmost importance to confer on the Council implementing powers to approve those rules.**
- (14) To improve Eurojust's governance and streamline procedures, an Executive Board should be established to assist the College in its management functions and to allow for streamlined decision-making on non-operational and strategic issues.
- (15) The Commission should be represented ~~in the College when it exercises its management functions and~~ in the Executive Board, to ensure non-operational supervision and strategic guidance of Eurojust.
- (16) In order to ensure an efficient day-to-day administration of Eurojust, the Administrative Director should be its legal representative and manager, accountable to the College ~~and the Executive Board~~. The Administrative Director should prepare and implement the decisions of the College and the Executive Board.
- (16a) A President and two Vice-Presidents should be elected by the College from among the national members for a term of office of four years. When a national member is elected to one of these positions, the Member State concerned may second another suitably qualified person to the national desk and apply for compensation from the Eurojust budget.**
- (16b) *Suitably qualified persons are persons that have the necessary qualifications and experience to perform the tasks required to ensure that the national desk functions effectively. In this respect, they may have the status of the deputy or Assistant as set out in Article 7 or alternatively they may have a more administrative or technical function. Each Member State may decide on its own requirements in this regard.*

- (16c) **Since the determination of the compensation model has a budgetary impact this Regulation should confer on the Council implementing powers to determine that model.**
- (17) The setting up of an On-Call Coordination (OCC) within Eurojust is necessary to make Eurojust available around the clock and to enable it to intervene in urgent cases. It should be the responsibility of each Member State to ensure that their representatives in the OCC are able to act on a 24-hour/7-day basis.
- (18) Eurojust national coordination systems should be set up in the Member States to coordinate the work carried out by the national correspondents for Eurojust, the national correspondent for Eurojust for terrorism matters, the national correspondent for the European Judicial Network and up to three other contact points, as well as representatives in the Network for Joint Investigation Teams and of the networks set up by Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes<sup>11</sup>, Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime<sup>12</sup> and by Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption<sup>13</sup>.
- (19) For the purposes of stimulating and strengthening coordination and cooperation between national investigating and prosecuting authorities it is crucial that Eurojust receives relevant information from national authorities necessary for the performance of its tasks. To this end, national competent authorities should inform their national members of the setting up and results of joint investigation teams, of cases under the competence of Eurojust directly involving at least three Member States and for which requests or decisions on judicial cooperation have been transmitted to at least two Member States, as well as, under certain circumstances, information on conflicts of jurisdiction, controlled deliveries and repeated difficulties in judicial cooperation.

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<sup>11</sup> OJ L 167, 26.6.2002, p.1.

<sup>12</sup> OJ L 332, 18.12.2007, p.103.

<sup>13</sup> OJ L 301, 12.11.2008, p.38.

- (20) ~~*Whilst the processing of personal data at Eurojust falls under the scope of Regulation (EC) 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<sup>14</sup>, the processing of personal data by the Member State's authorities and the transfer of such data to Eurojust are covered by the Council of Europe Convention 108 [to be replaced by the relevant Directive in force at the moment of adoption].*~~
- (20a) **Data protection rules at Eurojust should be strengthened and draw on the principles underpinning Regulation (EC) No 45/2001<sup>15</sup> to ensure a high level of protection of individuals with regard to processing of personal data. As Declaration 21 attached to the Treaty recognises the specificity of personal data processing in the field of judicial cooperation in criminal matters, the data protection rules of Eurojust should be autonomous and aligned with other relevant data protection instruments applicable in the area of judicial cooperation in the Union, in particular Directive of the European Parliament and of the Council 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<sup>16</sup>.**
- (20b) **Eurojust should keep records of collection, alteration, access, disclosure, combination or erasure of personal data for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security. Eurojust should be obliged to co-operate with the European Data Protection Supervisor and make the logs or documentation available upon request, so that they can be used for monitoring processing operations.**

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<sup>14</sup> OJ L 8, 12.1.2001, p. 1

<sup>15</sup> OJ L 8, 12.1.2001, p. 1.

<sup>16</sup> *It is assumed that the draft Directive (which is part of the data protection package, doc. 5833/12) will be adopted before the Eurojust Regulation. If not, a more general reference to Union legislation will be inserted at a later stage.*



- (20c) Eurojust should designate a data protection officer to assist it in monitoring compliance with the provisions of this Regulation. The data protection officer should be in a position to perform his/her duties and tasks independently and effectively.**
- (20d) National supervisory authorities responsible for the supervision of the processing of operational personal data should monitor the lawfulness of the exchange of operational personal data between Member States and Eurojust. The European Data Protection Supervisor should monitor the lawfulness of data processing by Eurojust exercising its functions with complete independence.**
- (20e) It is important to ensure a strengthened and effective supervision of Eurojust and to guarantee that appropriate judicial cooperation data protection expertise is available to the European Data Protection Supervisor when it takes on the responsibility for data protection supervision of Eurojust. The European Data Protection Supervisor and national supervisory authorities should closely co-operate with each other on specific issues requiring national involvement and to ensure coherent application of this Regulation throughout the Union. To ensure that specialist expertise is maintained, the European Data Protection Supervisor should co-operate with the national supervisory authorities in carrying out his/her duties, on the basis of a common understanding regarding the use of their expertise and experience, while maximising available resources and pooling expertise both at national and at Union level.**
- (20f) In order to facilitate the cooperation between the European Data Protection Supervisor and the national supervisory authorities, they should regularly meet within the Cooperation Board which should deliver opinions, guidelines, recommendations and best practices on various issues requiring national involvement.**
- (20g) As Eurojust is processing also non-operational personal data, not related to any criminal investigations, processing of such data should be subject to Regulation (EC) No 45/2001.**

- (20h) The European Data Protection Supervisor should hear and investigate complaints lodged by data subjects. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of progress and the outcome of the complaint within a reasonable period.**
- (20i) Any individual should have the right to a judicial remedy against decisions of the European Data Protection Supervisor concerning him/her.**
- (21) When Eurojust transfers **operational** personal data to an authority of a third country or to an international organisation ~~or Interpol~~ by virtue of an international agreement concluded pursuant to Article 218 of the Treaty the adequate safeguards adduced with respect to the protection of privacy and fundamental rights and freedoms of individuals have to ensure that the data protection provisions of this Regulation are complied with.
- (22) Eurojust should be authorised to process certain **operational** personal data on persons who, under the national ~~legislation~~ **law** of the Member States concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Eurojust is competent, or who have been convicted of such an offence. It is not intended that Eurojust carry out an automated comparison of DNA profiles or fingerprints.
- (23) Eurojust should be given the opportunity to extend the deadlines for storage of **operational** personal data, subject to observance of the purpose limitation principle applicable to processing of personal data in the context of all activities of Eurojust, in order to achieve its objectives. Such decisions should be taken following careful consideration of all interests at stake, including those of the data subjects. Any extension of deadlines for processing personal data, where prosecution is statute barred in all Member States concerned, should be decided only where there is a specific need to provide assistance under this Regulation.
- (24) Eurojust should maintain privileged relations with the European Judicial Network based on consultation and complementarity. This Regulation should help clarify the respective roles of Eurojust and the European Judicial Network and their mutual relations, while maintaining the specificity of the European Judicial Network.

- (25) Eurojust should maintain cooperative relations with other Union bodies and agencies, ~~with the European Public Prosecutor's Office~~, with the competent authorities of third countries as well as with international organisations, to the extent required for the accomplishment of its tasks.
- (26) To enhance operational cooperation between Eurojust and Europol, and particularly to establish links between data already in the possession of either body, Eurojust should enable Europol to have access **on the basis of a hit/no hit system** to ~~and be able to search against~~ data available at Eurojust.
- (26a) Eurojust and Europol should ensure that necessary arrangements are established to optimise their operational cooperation, taking due account of their respective missions and mandates and of the interests of Member States. In particular, Europol and Eurojust should keep each other informed of any activity involving the financing of Joint Investigation Teams.*
- (27) Eurojust should be able to exchange **operational** personal data with other Union bodies to the extent necessary for the accomplishment of its tasks.
- (28) Provision should be made for Eurojust to post liaison magistrates to third countries in order to achieve objectives similar to those assigned to liaison magistrates seconded by the Member States on the basis of Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union<sup>17</sup>.
- (29) Provision should be made for Eurojust to coordinate the execution of requests for judicial cooperation issued by a third country when they relate to a single investigation and require execution in at least two Member States.

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<sup>17</sup> OJ L 105, 27.04.1996, p.1.

- (30) To guarantee the full autonomy and independence of Eurojust, it should be granted an autonomous budget, with revenue coming essentially from a contribution from the budget of the Union, except as regards the salaries and emoluments of the national members and assisting persons, which are borne by their Member State of origin. The Union budgetary procedure should be applicable as far as the Union contribution and other subsidies chargeable to the general budget of the Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (31) In order to increase the transparency and democratic oversight of Eurojust it is necessary to provide mechanisms for the involvement of the European Parliament and national Parliaments in the evaluation of Eurojust's activities. This should not hinder the principles of independence as regards action taken in specific operational cases or the obligations of discretion and confidentiality.
- (32) It is appropriate to evaluate regularly the application of this Regulation.
- (32a) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents should apply to documents which relate to Eurojust's administrative tasks. Documents which relate to operational tasks should be excluded because of the inherent risk that the disclosure of the documents undermines ongoing investigations and court proceedings of Member States' judicial authorities.<sup>18</sup>***
- (33) Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>19</sup> should apply to Eurojust.
- (34) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>20</sup> should apply to Eurojust.

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<sup>18</sup> Recital 32a agreed in Partial General Approach.

<sup>19</sup> OJ L 298, 26.10.2012, p.1.

<sup>20</sup> OJ L 136, 31.5.1999, p.1.

- (35) The necessary provisions regarding accommodation for Eurojust in the Member State in which it has its headquarters, that is to say in the Netherlands, and the specific rules applicable to all Eurojust's staff and members of their families should be laid down in a headquarters agreement. ~~Furthermore, the host Member State should provide the best possible conditions to ensure the proper functioning of Eurojust, including schools for children and transport, so as to attract high quality human resources from as wide a geographical area as possible.~~
- (36) As Eurojust as set up by this Regulation replaces and succeeds Eurojust as established on the basis of Decision 2002/187/JHA, it should be the legal successor of Eurojust with respect to all its contractual obligations, including employment contracts, liabilities and properties acquired. International agreements concluded by Eurojust as established on the basis of that Decision should remain in force.
- (37) Since the objective of this Regulation, namely the setting up of an entity responsible for supporting and strengthening coordination and cooperation between judicial authorities of the Member States in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (38) ~~[In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation.]~~ **OR [In accordance with Articles 1,2 and 4a(1) of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol Ireland and the United Kingdom and Ireland are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]**

