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#### 'I/A' ITEM NOTE

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From: Presidency

To: Permanent Representatives Committee/Council

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No. prev. doc.: 7783/19, 7897/19 and 7770/19

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Subject: Council implementing Decision approving the conclusion by Eurojust of the agreement on criminal justice cooperation between Eurojust and Denmark  
- Adoption

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1. Article 26a(2) of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust, as last amended by Council Decision 2009/426/JHA of 16 December 2008, provides that Eurojust may conclude agreements with third States. According to this provision, '*Such agreements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers or liaison magistrates to Eurojust. Such agreements (...) may only be concluded after consultation by Eurojust with the Joint Supervisory Body concerning the provisions on data protection and after the approval by the Council, acting by qualified majority.*'

2. Denmark is bound by and subject to the application of Decision 2002/187/JHA. However, pursuant to Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not bound by or subject to the application of Regulation (EU) 2018/1727 on Eurojust, which replaces and repeals Council Decision 2002/187/JHA with effect from 12 December 2019. Therefore, Denmark will be regarded as a third State with respect to Eurojust as from that date.
3. Eurojust and Denmark wish to avoid the operational gap in their cooperation which would arise as of 12 December 2019. Therefore, they agreed to start negotiations on a cooperation agreement.
4. By letter dated 28 February 2019, the President of Eurojust informed the Council about Eurojust's plans to launch formal negotiations with the intention of entering into a cooperation agreement with Denmark (7110/19).
5. Following the successful conclusion of these negotiations, the text of the draft Agreement on Criminal Justice Cooperation between Eurojust and Denmark, including the annex thereto (Annex I and Annex II to 7897/19), was approved by the College of Eurojust on 21 March 2019 (Annex III to 7897/19). Subsequently, on 28 March 2019, the Joint Supervisory Board of Eurojust gave a positive opinion concerning the provisions on data protection (Annex IV to 7897/19).
6. In the meantime, a draft Council Implementing Decision approving the conclusion by Eurojust of the abovementioned draft Agreement on Criminal Justice Cooperation between Eurojust and Denmark had been submitted to the Member States (Annex V to 7783/19). At the meeting of the JHA Counsellors on 26 March 2019, this draft Implementing Decision was examined. No observations were made.

7. In line with the CJEU judgment in case C-540/13<sup>1</sup>, the European Parliament was consulted on the draft Council Implementing Decision as revised by the lawyer-linguists (7770/19), accompanied by the draft Agreement on Criminal Justice Cooperation between Eurojust and Denmark. The European Parliament delivered its positive opinion on this decision on 18 April 2019.
  
8. In the light of the above, and subject to confirmation by Coreper, the Council is invited to adopt the draft Council Implementing Decision approving the conclusion by Eurojust of the draft Agreement on Criminal Justice Cooperation between Eurojust and Denmark, as set out in 7770/19.

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<sup>1</sup> In its judgment of 16 April 2015 in case C-540/13, the Court of Justice of the European Union ruled that the Council should have consulted the European Parliament before adopting Council Decision 2013/392/EU fixing the date of effect of the VIS Decision, as stipulated by Article 39(1) of the former Treaty on European Union. This obligation to consult the European Parliament applies even in cases where the relevant provision of the basic act – like Article 26a(2) of Council Decision 2002/187/JHA – does not explicitly provide as much. In line with this judgment, the conclusion of the Agreement on Criminal Justice Cooperation between Eurojust and Denmark should be approved by adopting a Council Implementing Decision, regarding which the European Parliament should be consulted on the basis of Article 39(1) of the former Treaty on European Union.