



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 16 January 2013

5384/13

**COPEN 4
EUROJUST 3**

COVER NOTE

from: Ms Michèle Coninx, President of Eurojust

to: Mr Rafael Fernández-Pita y González, Acting Director-General, Council of the
European Union

date of receipt: 21 December 2012

Subject : Approval by the Council of the EU of the draft Agreement on Co-operation
between Eurojust and the Principality of Liechtenstein

Delegations will find attached a letter concerning the approval by the Council of the EU of the draft Agreement on Co-operation between Eurojust and the Principality of Liechtenstein, sent by Ms Michèle Coninx, President of Eurojust.



EUROJUST
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THE NETHERLANDS

At the attention of the President of the Council
H.E. Loucas Louca
Minister of Justice and Public Order of the Republic of Cyprus

The Hague, 20 December 2012

Approval by the Council of the EU of the draft Agreement on Co-operation between Eurojust and the Principality of Liechtenstein

Your Excellency,

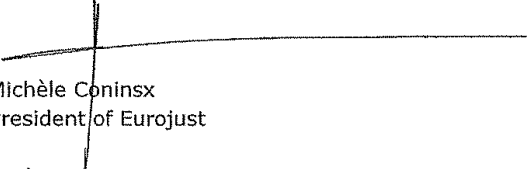
Eurojust is pleased to submit for your approval, in accordance with Article 26a(2) of the Council Decision of 28 February 2002 setting up Eurojust, as last amended by Council Decision 2009/426/JHA of 16 December 2008, the attached draft Agreement on Co-operation between Eurojust and the Principality of Liechtenstein.

Eurojust is further pleased to state that the negotiations with the Principality of Liechtenstein were concluded recently and full agreement has been reached on the attached document. To enable the final ratification, the agreement is now submitted to you for approval. As required, it has been approved by the College of Eurojust by decision of 20 November 2012, and, by decision of 23 November 2012, has received a positive opinion from the Joint Supervisory Body of Eurojust concerning the provisions on data protection.

As the threat of organised crime expands in area, as well as in size, this agreement is seen by Eurojust as an important step in enlarging the ever-growing geographical area in which Eurojust can operate and in which the concept of mutual legal assistance and judicial co-operation is significantly increased; and, as a direct result, limits the ability of criminal enterprises to escape the reach of the law by exploiting practical difficulties in co-operation between states.

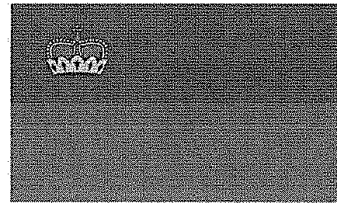
Eurojust welcomes the Council's approval of this Agreement on Co-operation between Eurojust and the Principality of Liechtenstein to enable Eurojust, as well as Member States, to benefit from co-operation with the Principality of Liechtenstein and to ensure and enhance the safety of all of the EU's citizens.

Yours faithfully,


Michèle Coninx
President of Eurojust

Encl.

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Draft Agreement on Co-operation between Eurojust and the Principality of Liechtenstein



Draft Agreement on Co-operation between Eurojust and the Principality of Liechtenstein

Eurojust and the Principality of Liechtenstein (hereinafter referred to as "Liechtenstein"), hereinafter referred to as 'the Parties',

Having regard to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as last amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust (hereinafter referred to as 'the Eurojust Decision'), and in particular Article 26a thereof;

Having regard to the opinion of the Joint Supervisory Body, as established by Article 23 of the Eurojust Decision, of 23 November 2012;

Considering the interests of both Eurojust and Liechtenstein in developing a close and dynamic co-operation to meet the present and future challenges posed by serious crime, in particular organised crime and terrorism;

Considering the close association of Liechtenstein with the justice and law enforcement co-operation of the Member States through the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on accession of the Principality of Liechtenstein to the agreement between the Council of the European Union, the European Community and the Swiss Confederation on the Swiss Confederations Association with the implementation, application and development of the Schengen *acquis*;

Considering the wish to improve judicial co-operation between Eurojust and Liechtenstein to facilitate the co-ordination of investigations and prosecutions covering Liechtenstein and one or more Member States of the European Union;

Considering that Liechtenstein is member of the European Economic Area;

Considering that Liechtenstein has ratified the Council of Europe Convention No. 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol that also play a fundamental role in the Eurojust data protection system;

Considering the high level of protection of personal data in the European Union, in particular the processing of personal data in accordance with the Eurojust Decision, the Eurojust Rules of Procedure on Data Protection and other applicable rules;

Respecting the fundamental rights and principles as set out in the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which are reflected in the Charter of Fundamental Rights of the European Union;

HAVE AGREED AS FOLLOWS:

Article 1 Definitions

For the purposes of this Agreement:

- a) 'Member States' means the Member States of the European Union;
- b) 'College' means the College of Eurojust, as referred to in Article 10 of the Eurojust Decision;
- c) 'National member' means the national member seconded to Eurojust by each Member State of the European Union, as referred to in Article 2(1) of the Eurojust Decision;
- d) 'Deputy' means a person who may act on behalf of or substitute the National Member, as referred to in Article 2(2) and Article 2(5) of the Eurojust Decision;
- e) 'Assistant' means a person who may assist a National Member or the Liaison Prosecutor, as referred to in Article 2(2) of the Eurojust Decision and in Article 5 of this agreement respectively;
- f) 'Liaison Prosecutor to Eurojust' means a public prosecutor subject to the national law of Liechtenstein as regards his or her status.
- g) 'Administrative Director' means the Administrative Director as referred to in Article 29 of the Eurojust Decision;
- h) 'Eurojust staff' means the staff referred to in Article 30 of the Eurojust Decision;
- i) 'Eurojust rules of procedure on data protection' means the rules of procedure for the processing and protection of personal data at Eurojust, approved by the Council of the European Union on 24 February 2005;
- j) 'Personal data' means any information relating to an identified or identifiable natural person (hereinafter referred to as the 'data subject'). 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 or her physical, physiological, mental, economic, cultural or social identity;
- k) '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.

Article 2
Purpose of this Agreement

The purpose of this Agreement is to enhance the co-operation between Eurojust and Liechtenstein in combating serious crime, in particular organised crime and terrorism.

Article 3
Scope of co-operation

1. Eurojust and Liechtenstein shall co-operate in the fields of activity as set forth in Articles 6, 7 and 27b of the Eurojust Decision and taking into account the powers granted to National Members in accordance with Articles 9a-9f of the Eurojust Decision within the competences of Eurojust as set forth in Article 4 of the Eurojust Decision. Any co-operation is subject to the Parties' applicable laws and legal frameworks.
2. Where Eurojust's mandate is changed to cover fields of activities and/or competences in addition to those set forth in paragraph 1, Eurojust may, from the date when the change to Eurojust's mandate enters into force, submit to Liechtenstein in writing a proposal to extend the scope of application of this Agreement to include the new mandate. This Agreement shall apply in relation to the new mandate as of the date on which Eurojust receives the written acceptance by Liechtenstein in accordance with its internal procedures.

Article 4
Relationship to other instruments on judicial co-operation in criminal matters

This agreement shall not affect the provisions in bilateral or multilateral agreements in the field of judicial cooperation in criminal matters between Liechtenstein and the Member States, nor the provisions in agreements concluded between the European Union and Liechtenstein, or between the European Union and its Member States, of the one part, and Liechtenstein, of the other part.

Article 5
Competency for the execution of this Agreement

1. The competent authority of Liechtenstein for the execution of this Agreement is the Office of the Public Prosecutor.
2. Within Eurojust and in accordance with Articles 6 and 7 of the Eurojust Decision, the national members concerned and the College are competent for the execution of this Agreement.

Article 6
Liaison Prosecutor to Eurojust

1. To facilitate co-operation as laid down in this Agreement, and in accordance with the provisions of Article 26a(2) of the Eurojust Decision, Liechtenstein may second a liaison prosecutor to Eurojust.
2. The mandate and the duration of secondment shall be determined by Liechtenstein.
3. The liaison prosecutor may be assisted by one person. When necessary, the assistant may replace him or her.
4. Liechtenstein shall inform Eurojust of the nature and extent of the judicial powers of the liaison prosecutor within its own territory in order to accomplish his or her tasks in accordance with the purpose of this Agreement. Liechtenstein shall establish the competence of its liaison prosecutor to act in relation to foreign judicial authorities.
5. The liaison prosecutor shall have access to the information contained in the national criminal records or in any other register of Liechtenstein in the same way as stipulated by Liechtenstein law in the case of a prosecutor or person of equivalent competence.
6. The liaison prosecutor may contact the competent authorities of Liechtenstein directly.
7. Eurojust shall endeavour to provide sufficient facilities to the liaison prosecutor, which shall include the use of office space and telecommunications services, to the extent possible within the constraints of the infrastructure and budget of Eurojust. Eurojust may request reimbursement of any or all expenses incurred by Eurojust in providing these facilities. However, no reimbursement will be requested in case Eurojust posts a liaison magistrate and the same facilities are provided to him. All details about the provision of the facilities and reimbursement of expenses shall be agreed between the competent authority of Liechtenstein and Eurojust before the detachment of the liaison prosecutor to Eurojust.
8. The working documents of the liaison prosecutor shall be held inviolable by Eurojust.

Article 7
Eurojust Liaison Magistrate

For the purpose of facilitating judicial co-operation with Liechtenstein in cases where Eurojust provides assistance and in accordance with the provisions of Article 27a(1) of the Eurojust Decision, the Parties may decide the posting of a Eurojust liaison magistrate to Liechtenstein. However, Eurojust may only enter into negotiations on the posting of a Eurojust liaison magistrate to Liechtenstein, after it has received the approval of the Council of the European Union in that respect. Furthermore, the posting of a Eurojust liaison magistrate to Liechtenstein requires a specific approval by the Liechtenstein Government.

Article 8
Contact point to Eurojust

1. Liechtenstein shall put in place or appoint at least one contact point to Eurojust within the office of the competent authority of Liechtenstein. This appointment shall be duly notified to Eurojust.
2. Liechtenstein shall designate one of its contact points as Liechtenstein's national correspondent for terrorism matters.

Article 9
Operational and strategic meetings

1. The liaison prosecutor, his or her assistant, and other Liechtenstein competent authorities, including the contact point to Eurojust, may participate in operational and strategic meetings, at the invitation of the President of the College and with the approval of the national members concerned.
2. National members, their deputies and assistants, the Administrative Director and Eurojust staff may also attend meetings organised by the liaison prosecutor or other Liechtenstein competent authorities, including the contact point to Eurojust.

Article 10
Exchange of information

1. In accordance with this Agreement the Parties may exchange all information that is adequate, relevant and not excessive in order to achieve the purpose of this Agreement as laid down in Article 2.
2. The requesting Party shall notify the other Party of the purpose for which the information is requested. In the case of spontaneous transfer of information, the Party providing information shall notify the other Party of the purpose for which the information is supplied.
3. The Party providing the information may impose restrictions to the use of the information provided. This also includes possible access restrictions, restrictions on further transmission 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.
4. The Parties shall keep a record of the transmission and receipt of data communicated under this Agreement, including the grounds for such transmissions.

Article 11
Channels of transmission

1. The information shall be exchanged:
 - a) either between the liaison prosecutor or, if no liaison prosecutor is appointed or otherwise available, the contact point to Eurojust and the national members concerned or the College; or
 - b) if Eurojust has posted a liaison magistrate to Liechtenstein, between the Eurojust liaison magistrate and the competent authorities of Liechtenstein; or
 - c) directly between the judicial authority in charge of investigating and/or prosecuting the case and the national members concerned or the College. In this event, the liaison prosecutor or, if applicable, the Eurojust liaison magistrate, shall be informed about any such information exchanges.
2. The Parties are not precluded from agreeing to use other channels for the exchange of information in particular cases.
3. Both Parties shall ensure that their respective representatives are authorised to exchange information at the appropriate level and are adequately screened.

Article 12
Privacy and Data Protection

1. The Parties recognise that the appropriate and adequate handling and processing of personal data they acquire from each other is of critical importance to preserving confidence in the implementation of this Agreement.
2. The Parties shall guarantee a level of protection for personal data supplied by the other Party at least equivalent to that resulting from the application of the principles contained in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and subsequent amendments thereto as well as in the principles laid down in the Eurojust Decision and in the Eurojust rules of procedure on data protection.
3. In respect of personal data exchanged pursuant to this Agreement, the Parties shall ensure that
 - a) the personal data are fairly processed;
 - b) the personal data provided are adequate, relevant and not excessive in relation to the specific purpose of the request or transfer as defined in Article 10(2);
 - c) the personal data are retained only so long as necessary for the purpose for which the data were provided or further processed in accordance with this Agreement; and
 - d) possibly inaccurate personal data are timely brought to the attention of the receiving Party in order that appropriate corrective action is taken.

Article 13
Transmission of Special Categories of Personal Data

1. Personal data revealing racial or ethnic origin, political opinions or religious or other beliefs, trade union membership or concerning health and sexual life may only be provided if they are strictly necessary for a purpose set forth in Article 2 of this Agreement.
2. The Parties shall take adequate safeguards, in particular appropriate security measures, in order to comply with the special sensitivity of the categories of personal data mentioned in paragraph 1.

Article 14
Right of access to personal data

1. The data subject is entitled to have access to personal data exchanged under this Agreement. Access is exercised in accordance with the law applicable to the Party to which the request is submitted. That Party shall ensure that its decision is communicated to the data subject in a timely manner. Access to personal data shall be denied if providing such access may jeopardise
 - a) the purposes of the processing;
 - b) investigations or prosecution conducted by the competent authorities in Liechtenstein or by the competent authorities in the Member States which Eurojust is assisting;
 - c) the rights and freedoms of third parties.
2. The Party to which the request is submitted shall give the other Party the opportunity to express its opinion as to the possible existence of one of the grounds to deny access as set forth in paragraph 1.

3. This Article is without prejudice to any rights an individual may have under the law applicable to the transmitting Party to seek release of information from that Party, or other appropriate relief.

Article 15

Right of correction, blockage and deletion of personal data

1. The data subject shall be entitled to request to the Party which has processed data relating to him/her under this Agreement to correct, block or delete those data if they are incorrect or incomplete or if their collection, further processing or storage contravenes this Agreement or the respective rules applicable to the Parties.
2. Where a Party becomes aware either via the request of the data subject, via notification from the transmitting Party or via some other way that information it has received from the other Party is not accurate, it shall take all appropriate measures to safeguard against erroneous reliance on such information, which may include supplementation, deletion or correction of such information.
3. Where a Party becomes aware that information it possesses causes significant doubt as to the accuracy of information received pursuant to this Agreement, or an assessment made by the other Party of the accuracy of information or the reliability of a source, it shall inform the other Party thereof.

Article 16

Time limits for the storage of personal data

Personal data shall be stored only for so long as necessary for the achievements of the purpose of this Agreement or for the purposes for which the data were collected or further processed according to Article 2 of this Agreement.

Article 17

Data security

The Parties ensure that the necessary technical measures and organisational arrangements are utilised to protect personal data received under this Agreement 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.

Article 18

Onward transfers

The Parties shall not communicate any information provided by the other Party to any third State or body without the consent of the latter and without appropriate safeguards regarding the protection of personal data.

Article 19
Liability

1. Liechtenstein shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data exchanged with Eurojust. Liechtenstein shall not claim that Eurojust had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party.
2. Without prejudice to Article 24 of the Eurojust Decision, if legal or factual errors occurred as a result of data erroneously communicated by Eurojust or one of the Member States of the European Union or another third state or third body, Eurojust shall be bound to repay, upon request, the amounts paid as compensation under paragraph 1, unless the data were used in breach of this Agreement. The provisions of this paragraph shall also apply where the legal or factual errors occurred as a result of failures on the part of Eurojust or one of the Member States of the European Union or another third state or third body to comply with its obligations.
3. In cases where Eurojust is obliged to repay to Member States of the European Union or another third state or third body amounts awarded as compensation for damages to an injured party, and the damages are due to Liechtenstein's failure to comply with its obligations under this Agreement, Liechtenstein shall be bound to repay on request the amounts which Eurojust paid to a Member State or to another third state or third body to make up for the amounts it paid in compensation.
4. The Parties shall not require each other to pay compensation for damages under paragraphs 2 and 3 to the extent that the compensation for damages was enforced as punitive, increased or other non-compensatory damages.

Article 20
Regular consultations

1. The Parties shall hold at least once a year regular exchanges of views with regard to the implementation and further developments in the field of data protection and data security.
2. To that end the Data Protection Officer of Eurojust and the Data Protection Authority of Liechtenstein will inform each other at least once a year on the state of implementation of the data protection provisions of the Agreement.
3. Where necessary, issues identified by the Parties in the context of these data protection consultations will be reported to the appropriate oversight mechanisms, and in particular to the Joint Supervisory Body of Eurojust.

Article 21
Monitoring of the implementation

1. With the purpose of monitoring the implementation of this agreement, the Parties shall carry out a joint annual review of its implementation.
2. Any possible issues identified by the Parties in the context of these joint reviews shall be jointly addressed by the Parties in accordance with Article 24 of this agreement.

Article 22
Oversight of implementation

The execution and implementation of this Agreement by the Parties shall be subject to oversight in accordance with their applicable law and procedures. The Parties shall utilise their respective administrative, judicial or supervisory bodies that will ensure an appropriate level of independence of the oversight process.

Article 23
Expenses

Without prejudice to Article 6(7), neither Party shall make any pecuniary claim against the other Party for expenses arising out of the execution of this Agreement. Should expenses of an extraordinary nature arise out of the execution of this Agreement, the Parties may consult with a view to determining the manner in which they shall be addressed.

Article 24
Settlement of disputes

1. On request of either of them, the Parties shall promptly meet in order to solve any dispute concerning the interpretation or application of this Agreement or any question affecting the relationship between them.
2. If a dispute on the interpretation or application of this Agreement cannot be resolved, the Parties may enter into negotiations on the specific issue.

Article 25
Amendments

1. This Agreement may be amended by mutual consent between the Parties in written form at any time. Such amendment will enter into force after the Parties have notified each other of the completion of their respective internal requirements
2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either party.

Article 26
Termination of this Agreement

1. This Agreement may be terminated by each Party within three months' notice.
2. In case of termination, the Parties shall reach agreement under the conditions set out in this Agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either of the two Parties is entitled to request deleting the information which has been communicated.

Article 27
Entry into force

As soon as the Parties have complied with their legal requirements, they shall notify each other in writing of the completion of the internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the day following the confirmation of receipt of the last notification.

Done atthis day of two thousand and (...) in duplicate in the English and German languages, each text being equally authentic.

The President of Eurojust,

The xxxxx of the
Principality of Liechtenstein,

Michèle Coninsx

xxxxx



EUROJUST'S INDEPENDENT DATA PROTECTION SUPERVISOR

**Opinion of the Joint Supervisory Body of Eurojust on the draft agreement
between Eurojust and the Principality of Liechtenstein**

On the 15th November 2012 the Joint Supervisory Body was requested to consider the draft agreement between Eurojust and the Principality of Liechtenstein.

In accordance to article 27.3 of the Eurojust Decision, the Joint Supervisory Body will be consulted by Eurojust when concluding agreements with third parties which contain provisions on the exchange of personal data.

The Joint Supervisory Body appreciates the fact that Eurojust, through the chair of the external relations team, Ms Gabrijelčič, has provided it with extensive information through the process of negotiations and is pleased to observe that the level of protection in the Principality of Liechtenstein has been checked by the Data Protection Officer.

After careful deliberation and discussion, the Joint Supervisory Body concluded as follows:

Considering that the Principality of Liechtenstein has ratified Convention 108 of the Council of Europe on 11 May 2004 and that the Convention entered into force in Liechtenstein on 1 September 2004.

Considering that the Principality of Liechtenstein has, following the negotiations with Eurojust, ratified the Additional Protocol to the Council of Europe Convention 108 on the 28th of January 2010 and that it entered into force on the 1st of May 2010.

Considering the fact that the Principality of Liechtenstein informed Eurojust on 6 March 2012 of the amendments to the Data Protection Act as well as the criminal procedure law, which - *inter alia* - implemented the EU framework decision on data protection to the satisfaction of the Data Protection Officer of Eurojust and that the amended laws entered into force on 1 October 2012.

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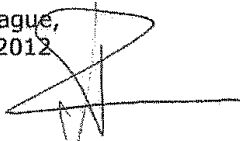
EUROJUST'S INDEPENDENT DATA PROTECTION SUPERVISOR

Considering that the draft agreement contains all relevant data protection provisions in line with the model agreement positively evaluated by the Joint Supervisory Body in previous occasions,

The Joint Supervisory Body considers the provisions on the exchange of personal data contained in the draft agreement between Eurojust and the Principality of Liechtenstein adequate and gives therefore a positive opinion on the draft agreement.

Done at The Hague,
23 November 2012

Lotty Prussen
Chair of the Joint Supervisory Body



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