



**COUNCIL OF
THE EUROPEAN UNION**

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**EUROJUST 65
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COVER NOTE

From: General Secretariat
To: delegations

Subject: Approval by the Council of the EU of the draft Memorandum of Understanding
between Eurojust and Frontex

Delegations will find in the Annexes a letter from the President of Eurojust and two attachments.



EUROJUST
The European Union's Judicial Cooperation Unit
P.O. Box 16183 – 2500 BD The Hague • The Netherlands

D130159

To the attention of:
The President of the Council of the European Union
H.E. Juozas Bernatoniš
Minister of Justice of Lithuania

The Hague, 22 July 2013

Approval by the Council of the EU of the draft Memorandum of Understanding between Eurojust and Frontex

Mr. President,

Your Excellency,

On 13 May 2011, I informed the Council of the European Union that Eurojust envisaged instituting formal negotiations to conclude a Memorandum of Understanding with Frontex. I am now pleased to inform you that the negotiations have been successfully concluded.

The draft Memorandum of Understanding attached to this letter was approved by the College of Eurojust by its decision of 12 March 2013. The Joint Supervisory Body of Eurojust delivered its opinion on 20 June 2013 by welcoming the draft Memorandum of Understanding, stating that it is generally satisfied with its content but would like to make the following observations: *“Article 4.2 of the Memorandum implies the possibility for Eurojust and Frontex to exchange strategic information other than what is enumerated in this Article. It should in any case be stressed that any kind of information exchanged should in any cases comply with Article 4.4. of this Memorandum, meaning that in no case personal data could be part of such strategic information exchanged.”*

Eurojust and Frontex have taken note of the Joint Supervisory Body's observation and will take it into account. The observation does not affect the content of the draft Memorandum of Understanding.

In accordance with Article 26(2) of the Eurojust Decision, the attached draft Memorandum of Understanding between Eurojust and Frontex requires approval by the Council of the European Union.



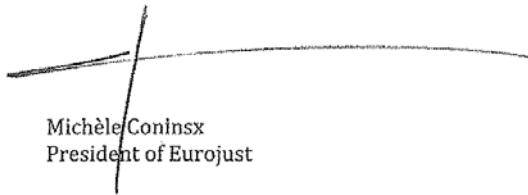
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To this end, I would be most grateful if you could submit it for consideration at an upcoming meeting of the Council of the European Union. Eurojust would welcome the Council's approval of this draft Memorandum of Understanding between Eurojust and Frontex, which will enable both organisations to enhance their cooperation and support the fight against serious cross-border crime, including smuggling and trafficking in human beings.

Yours faithfully,



Michèle Coninsx
President of Eurojust

Enc: - **Att. 1:** Draft Memorandum of Understanding between Eurojust and Frontex
- **Att. 2:** Opinion of the Joint Supervisory Body of Eurojust on the draft Memorandum of Understanding between Eurojust and Frontex

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Opinion of the Joint Supervisory Body of Eurojust regarding the Memorandum of Understanding between Frontex and Eurojust

On the 31st May 2013 the Joint Supervisory Body was invited by Eurojust to give its views regarding the envisaged Memorandum of Understanding between Frontex and Eurojust in the light of Article 26.2 of the Eurojust Decision.

Following the request from the Eurojust presidency to issue an opinion in the shortest possible timeframe, the JSB considered this text during its meeting on the 20th June 2013.

The Joint Supervisory Body appreciates very much the opportunity to provide its views regarding this proposal.

The Joint Supervisory Body welcomes the draft Memorandum of Understanding between Eurojust and Frontex and is generally satisfied with its content but would like to make the following observations:

- ✓ Article 4.2 of the Memorandum implies the possibility for Eurojust and Frontex to exchange strategic information other than what is enumerated in this Article. It should in any case be stressed that any kind of information exchanged should in any cases comply with Article 4.4. of this Memorandum, meaning that in no case personal data could be part of such strategic information exchanged.
- ✓ Concerning Article 4.4 of the Memorandum, the JSB would strongly welcome the deletion of the wording “notwithstanding Article 13 of the Frontex regulation and Article 26 of the Eurojust Decision” at the beginning of this paragraph, as this wording could lead to misunderstanding.

It would further suggest aligning the wording of this paragraph, which is the most important one from the data protection viewpoint, to the wording used in the Memoranda with IberRed, Interpol and so forth, which exclude both the transmission of operational and personal data.

The JSB does not see any reason for using a different wording in this case and advises Eurojust to use the same formulation also in this case for reasons of consistency and clarity.

The Joint Supervisory Body of Eurojust trusts that these observations will be taken on board by Eurojust and, provided this is the case, issues a positive opinion regarding this Memorandum of Understanding.

Done at The Hague,
20 June 2013



Lotty Prussen
Chair of the Joint Supervisory Body

DRAFT

Memorandum of Understanding

on cooperation

between

Frontex and Eurojust

Preamble

Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU established by Council Regulation 2007/2004 of 26 October 2004 (hereinafter referred to as the “Frontex Regulation”)¹ represented for the purposes of signature of this Memorandum of Understanding by its Executive Director Ilkka Laitinen,

and

Eurojust established by Council Decision of 28 February 2002 with a view to reinforcing the fight against serious crime, as last amended by Council Decision 2009/426/JHA of 16 December 2008 on strengthening Eurojust² (hereinafter referred to as the “Eurojust Decision”), represented for the purposes of signature of this Memorandum of Understanding by its President, Michèle Coninx, (hereinafter collectively referred to as the “Parties”, or individually as the “Party”)

Having regard to the Stockholm Programme, which stresses the need for increased co-ordination among the EU agencies and bodies including Eurojust and Frontex, and for a more effective law enforcement cooperation among the EU Justice and Home Affairs Agencies,

Having regard to Article 13 of the Frontex Regulation which provides that Frontex may cooperate with Union agencies and bodies competent in matters covered by the Regulation within the framework of working arrangements concluded with those bodies, in accordance with the relevant provisions of the TFEU and the provisions on the competence of those bodies,

Having regard to Article 26(1)(c) of the Eurojust Decision which provides that Eurojust shall establish and maintain cooperative relations with Frontex,

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004, OJ L 349, 25.11.2004, as last amended.

² Council Decision 2002/187/JHA of 28 February 2002, OJ L 63, 6.3.2002 as last amended

Considering that the Standing Committee on Operational Cooperation on Internal Security (COSI) shall ensure consistency in the work carried out by Eurojust, Europol, Frontex and other relevant bodies dealing with internal security issues,

Considering that EU Justice and Home Affairs Agencies including Eurojust and Frontex signed a Joint Statement at the occasion of the 5th EU Anti-trafficking Day in Warsaw in 2011 in which they committed themselves to address trafficking in human beings in a coordinated, coherent and comprehensive manner,

Considering that the JHA Agencies in their joint report to the EU Internal Security Committee¹ clearly stressed their will to further improve their bilateral and multilateral cooperation,

Considering that detection and investigation of cross border crime in coordination with all competent law enforcement authorities is an essential dimension of the concept of integrated border management, as stated by the Council in its Conclusions on Integrated Border Management on 4-5 December 2006,

Have agreed as follows:

Article 1

Purpose

1. The purpose of this Memorandum of Understanding is to define, encourage and improve cooperation between Eurojust and Frontex (hereinafter referred to as “the Parties”) in accordance with their respective mandate.
2. In particular, both Parties shall enhance their cooperation in order to support the fight against serious cross-border crime, such as smuggling and trafficking in human beings.

¹ 8387/10 JAI 287 COSI 17 + COR 1.

Article 2
Contact Points

1. Each Party shall establish a contact point, whose task shall be to coordinate cooperation between the two Parties.
2. The contact points shall consult each other on a regular basis, in particular regarding matters falling under Articles 2, 3, 4 and, 5 of this Memorandum of Understanding.
3. The Parties will exchange with each other contact details of the contact points. The Parties will inform each other in writing without undue delay of any change related to the designated contact points.

Article 3
Mutual consultation, exchange of general information and coordination

1. The Parties shall consult each other regularly on issues of common interest for the purpose of realising their objectives and coordinating their activities.

In particular, within the limits of their respective legal frameworks, the Parties shall inform each other about developments in fields and projects of mutual interest and exchange observations concerning such activities to enable them to promote effective cooperation.

2. The Parties shall – where appropriate – coordinate their activities in multilateral fora such as the Heads of Justice and Home Affairs Agencies and the Standing Committee on Operational Cooperation on Internal Security (COSI).

Article 4

Exchange of strategic and technical information

1. The cooperation between the Parties shall be enhanced by the exchange of strategic and technical information.
2. "Strategic information" includes, but is not limited to:
 - a. Information of strategic nature such as trends and challenges faced related to serious cross-border crime;
 - b. Analysis of serious cross-border crime and new methods including trends;
 - c. Observations and general findings resulting from Eurojust's activities that support the detection or prevention of serious cross-border crime.
3. "Technical information" includes, but is not limited to:
 - a. Means of strengthening administrative, judicial and law enforcement structures and cooperation in the fields covered by this Memorandum of Understanding, including a more structured exchange of technical information and, if considered to be useful, setting up combined analysis; and
 - b. Training methods for officials concerned from both Parties.
4. Exchange of information or experience provided for in this Memorandum of Understanding shall not include the transmission of operational information, including data relating to an identified or identifiable person.

Article 5

Joint training and exchange of best practices

1. The Parties may prepare and implement joint training activities including contributions to the development of courses, seminars, conferences, study visits, training tools and materials in areas of common interest.
2. The goals of joint trainings - are to encourage and improve the cooperation in the fight against serious cross-border crime, in particular organised crime, smuggling and trafficking in human beings.
3. The Parties shall exchange expertise and best practices on areas of common interest.

Article 6

Assessment of the cooperation

At least once a year the Parties shall report to each other on the state of implementation of this Memorandum of Understanding and propose methods for improvement.

Article 7

Expenses

The Parties shall commit to bear their own expenses which might arise in the course of implementation of the present Memorandum of Understanding, unless otherwise agreed on a case-by-case basis.

Article 8
Confidentiality

Each Party shall ensure that information, including EU classified information (EUCI), provided or exchanged under this MoU will receive a level of protection which is equivalent to the level of protection offered by the security standards applied to that information by the other Party, based on the basic principles and minimum standards of the applicable legal framework at EU level.

Article 9
Settlement of disputes

All disputes which may emerge in connection with the interpretation or application of the present working arrangement shall be settled by means of consultations and negotiations between representatives of the Parties.

Article 10
Amendments

1. This Memorandum of Understanding 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. Both Parties shall enter into consultation with respect to possible amendments to this Memorandum of Understanding at the request of either Party.

Article 11
Termination

This Memorandum of Understanding may be terminated by each Party in writing by giving three months' notice.

Article 12
Entry into force

This Memorandum of Understanding shall enter into force on the first day of the month following its signature by both Parties.

For Eurojust,
The President of the College,

For Frontex,
The Executive Director,

Michèle Coninsx

Ilkka Laitinen