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COVER NOTE

From: Ms Michèle Coninx, President of Eurojust
date of receipt: 9 February 2017
To: H.E. Mr Joseph Muscat, President of the Council of the European Union,
Prime Minister of Malta

Subject: Draft Memorandum of Understanding between Eurojust and the European
Agency for the Operational Management of large-scale IT Systems in the
Area of Freedom, Security and Justice (eu-LISA)

Delegations will find attached a letter from the President of Eurojust (Annex 1) related to the draft Memorandum of Understanding between Eurojust and eu-Lisa (Annex 2) and the opinion of the Joint Supervisory Body of Eurojust on this draft Memorandum of Understanding (Annex 3).

H.E. Mr Joseph Muscat
President
of the Council of the European Union
Prime Minister of Malta

Via e-mail only:
[\[gilles.duval@consilium.europa.eu\]](mailto:gilles.duval@consilium.europa.eu)

The Hague, 08 February 2017

Approval by the Council of the EU of the draft Memorandum of Understanding between Eurojust and the European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice

Your Excellency,

On 17 April 2015, we informed the Council of the EU that Eurojust envisaged instituting formal negotiations aimed at the conclusion of a Memorandum of Understanding with the European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA). 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 decision of 4 October 2016. The Joint Supervisory Body of Eurojust delivered a positive opinion on 13 October 2016 and welcomed the draft Memorandum of Understanding.

In accordance with Article 26(2) of the Eurojust Decision, the attached draft Memorandum of Understanding between Eurojust and eu-LISA requires approval by the Council of the EU.

To this end, I would be most grateful if you could submit it for consideration at the next meeting of the Council of the EU. Eurojust would welcome the Council's approval of this draft Memorandum of Understanding between Eurojust and eu-LISA, which will enable both organisations to enhance their cooperation in areas of common interest.

Yours faithfully,

Michèle Coninx
President of Eurojust

Enc.: Draft Memorandum of Understanding between Eurojust and eu-LISA

MEMORANDUM OF UNDERSTANDING

between

The European Union's Judicial Cooperation Unit (Eurojust)

and

The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA)

Eurojust, represented for the purpose of signing this Memorandum of Understanding by the President of the College of Eurojust, Michèle Coninx, and

The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (hereinafter referred to as eu-LISA), represented for the purpose of signing this Memorandum of Understanding by its Executive Director, Krum Garkov,

hereinafter collectively referred to as the "Parties", or individually as the "Party",

Having regard to Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view of reinforcing the fight against serious crime, as last amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust (the "Eurojust Decision"), and in particular Article 26(1) thereof,

Having regard to Regulation (EU) 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, in particular Article 17 read together with Recital 21 thereof,

Whereas:

- (1) Under Article 26 (1) of the Eurojust Decision, Eurojust may establish and maintain cooperative relations with the institutions, bodies and agencies set up by, or on the basis of the Treaties establishing the European Communities or the Treaty on European Union.
- (2) Eurojust attends the meetings of the eu-LISA Management Board as an observer in accordance with Article 15(4) of Regulation 1077/2011 when a question concerning Schengen Information System (SIS II) in relation to the application of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II Decision) is on the agenda.
- (3) Eurojust appoints a representative to the SIS II Advisory Group in accordance with Article 19(3) of Regulation 1077/2011.
- (4) Pursuant to Article 42 of the SIS II Decision, the national members of Eurojust and their assistants have, within their mandate, have the right to access and search data entered in SIS II in accordance with Articles 26, 32, 34 and 38 of that Decision.
- (5) In line with their respective mandates, cooperation between the Parties could contribute to developing further the provision of expertise as well as operational and technical support to the EU and its Member States.
- (6) In line with the Common Approach on EU decentralised agencies and its roadmap, enhanced cooperation between the Parties could create synergies and added value as well as foster coherence among their actions in fulfilling their respective mandates.
- (7) It is within the common interest of the Parties to establish a Memorandum of Understanding in the areas of mutual interest.

Have agreed as follows:

Article 1

Purpose

The purpose of this Memorandum of Understanding is to establish a cooperation framework between the Parties by identifying the areas of cooperation based on common interest and to set the objectives and principles of such cooperation.

Article 2

Areas of cooperation

1. The Parties agree to cooperate by exchanging expertise and best practices developed in the implementation of their respective mandates, in particular, in the following areas:
 - a. Exchange of information;
 - b. ICT related matters;
 - c. Cooperation with regard to the right of Eurojust to access SIS II;
 - d. Strategic and administrative matters;
 - e. Other areas identified as mutually important.

Article 3

Exchange of information

1. The Parties agree to cooperate in exchanging information on relevant research related activities, in accordance with the relevant provisions of their founding Regulations.
2. 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.

3. Without prejudice to paragraph 1, the exchange of information can include, but it is not limited to:
 - a. Observations and general findings resulting from eu-LISA's or Eurojust's activities that could be of help for the work of the other Party;
 - b. Exchange of best practices, tools and recommendations that could help the Parties to strengthen their cooperation in the fields covered by the present Memorandum of Understanding;

Article 4

ICT related matters

1. The Parties may assist each other with know-how, expertise, best practices, lessons learned and advice in technical, operational and ICT related matters.
2. The Parties may cooperate for the purpose of ensuring business continuity in the area of ICT. For that purpose, the Parties may decide to provide access to relevant technical information. Possible activities to assist each other and create synergies in business continuity would be laid down under a separate arrangement.
3. The implementation of this article shall take into account each Party's priorities and resource limitations.

Article 5

Cooperation with regard to the right of Eurojust to access SIS II

1. The Parties shall cooperate with regard to the implementation of the right of Eurojust to access SIS II within the limits of their mandates and the SIS II Decision.
2. The Parties shall exchange information relevant to the effective implementation of the right of Eurojust to access SIS II.

Article 6

Strategic and administrative matters

1. The Parties agree to consult each other where relevant when preparing their respective strategic documents, such as work programmes, strategies and action plans, on the areas of cooperation identified in this Memorandum of Understanding.
2. Each Party may, where appropriate, invite the other Party to participate in its planning activities to ensure consultation and the coordination of the relevant activities.
3. The Parties may cooperate in administrative matters by sharing expertise and best practices including in the fields of human resource management, management of premises, internal and external audits, finance and procurement.
4. The Parties will, if appropriate, explore the possibilities of setting up training activities that are of interest to both Parties. The contribution of one Party to the training materials or activities of the other Party will be duly acknowledged by the latter.

Article 7

Confidentiality and Security

1. Each Party undertakes to keep confidential any information, document or other material provided by the other Party, not to disclose it to third parties without a prior written consent of that Party and not to use any such information for any purpose other than the implementation of this Memorandum of Understanding.
2. Each Party shall ensure that information, including EU classified information (EUCI) and non-classified sensitive information provided or exchanged under this Memorandum of Understanding is protected according to their respective security rules and principles as referred to in their respective establishing acts without prejudice to the role of their respective governing bodies to put these security rules and principles in practice.
3. The Party supplying the information will be responsible for the choice of the appropriate confidentiality level for the information and shall ensure that the level is clearly indicated. The receiving Party will take appropriate measures to ensure the required level of protection.
4. Both Parties agree to cooperate in the field of security in particular as regards measures necessary for the protection of EU classified information or other sensitive information by means of consultation, mutual support or exchange of best practices.

Article 8

Expenses

The Parties shall bear their own expenses which may arise when implementing the present Memorandum of Understanding unless otherwise mutually agreed on a case-by-case basis.

Article 9

Contact points

Each Party shall establish a contact point to coordinate the cooperation with the other Party. The contact points shall maintain mutual and regular exchange of information and consultation on the cooperation activities undertaken, on projects of mutual interest that may be jointly implemented, and on all other matters of common interest falling under the present MoU.

Article 10

Evaluation of the cooperation

The Parties will assess annually the progress made in the implementation of this Memorandum of Understanding and discuss further cooperation activities.

Article 11

Settlement of disputes

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

Article 12

Amendments and supplements to the Memorandum of Understanding

1. This Memorandum of Understanding may be amended or supplemented at any time by mutual consent between the Parties.
2. All amendments and supplements shall be done in writing. They will enter into force on the date on which they are signed by the last Party.

Article 13

Termination

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

Article 14

Entry into force

This Memorandum of Understanding enters into force on the day following its signature by both Parties.

Done at ... on ... in duplicate copy in the English language.

For Eurojust,

For eu-LISA,

The President,
Michèle CONINSX

The Executive Director,
Krum GARKOV

JSB EUROJUST'S INDEPENDENT DATA PROTECTION SUPERVISOR

**Opinion of the Joint Supervisory Body of Eurojust on
the draft Memorandum of Understanding between
Eurojust
and
the European Agency for the operational management of large-scale IT systems
in the area of freedom, security and justice (eu-LISA)**

On 13 October 2016 the Joint Supervisory Body was invited by Eurojust to give its opinion on the draft Memorandum of Understanding between the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) and Eurojust, in accordance with Article 26(2) of the Eurojust Decision.

The Joint Supervisory Body welcomed the draft Memorandum of Understanding between Eurojust and eu-LISA and in particular the wording used in its Article 2(2) which provides that the *“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”*. Accordingly, the draft Memorandum does not include any legal basis to exchange personal data.

The Joint Supervisory Body of Eurojust issues therefore a positive opinion regarding this Memorandum of Understanding.

Done at The Hague,
13 October 2016

Hans Frennered
Chair of the Joint Supervisory Body of Eurojust

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