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NOTE

from:	Presidency
to:	CATS
Subject:	Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (EUROJUST) - <u>Strategic Discussion on Data Protection</u>

1) Processing of personal data

The respective Commission proposals on Eurojust and Europol provide for different rules relating to processing of personal data. The draft Regulation on Eurojust stipulates that Regulation (EC) No 45/2001 shall apply to the processing of personal data by Eurojust subject to *lex specialis* rules contained in the draft Eurojust Regulation, whereas the draft Regulation on Europol contains a specific complete set of rules on data protection based on the principles of Regulation (EC) No 45/2001 but does not provide for its direct application to the processing of data by Europol.

Discussions at the COPEN Working Party have shown that whilst many delegations could accept the need to strengthen the data protection regime of Eurojust drawing on the principles underpinning Regulation (EC) 45/2001 as per the draft Regulation on Europol, they queried whether Regulation (EC) 45/2001 should in principle apply to *all* data (including operational data) processed by Eurojust.

In light of the discussions at Copen, CATS is invited to consider whether Regulation (EC) no 45/2001 should apply to operational personal data processed by Eurojust

- If not, should a complete set of data protection rules be introduced in the draft Eurojust Regulation to take account of the specificity of Eurojust's mission which is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities for certain crimes under the conditions provided for in Article 85 TFEU?

II) Supervisory mechanism

The draft Regulations on Eurojust and Europol introduce a significant change in the supervision mechanism for both agencies, by establishing the responsibility of the European Data Protection Supervisor (EDPS) as regards the monitoring of all personal data processing. The EDPS meets the following requirements: its complete independence is ensured (in line with the interpretation given by the Court of Justice inter alia in cases C-518/07 and C-614/10), it is vested with effective enforcement and sanctioning powers (has the authority to autonomously adopt legally binding decisions effectively enforceable against the supervised agency) and it is subject to effective judicial review (as required by Article 47 of the Charter). On that basis, the EDPS will take over the tasks of the JSB established under the respective Eurojust and Europol Council Decisions.

The LEWP has revised the original Commission proposal on Europol in relation to the supervision by the EDPS to include additional measures to bolster the cooperation between the EDPS and national supervisory authorities and the most recent Presidency text¹ provides that the EDPS shall;

- Use, where relevant, the expertise and experience of national supervisory authorities in carrying out his duties under Article 46(2);
- inform national supervisory authorities of all issues relevant to them;
- consult the national supervisory authorities in specific cases which concern them;
- not decide on further action to be taken before these national supervisory authorities have proffered their position in these specific cases and take utmost account of the position of the national supervisory authorities concerned; in cases where the EDPS intends not to follow their position, he/she shall inform them and provide a justification;

¹ Doc 8596/14 Presidency compromise text 7th April.

- meet with national supervisory authorities at least twice a year to determine general policy and strategy and discuss other issues as stipulated in the Regulation.

Furthermore, the same Presidency text has adjusted the enforcement powers of the EDPS under Article 46(3) to take into account, where relevant, the implications for law enforcement activities by the Member States. In particular, the most far-reaching EDPS' power to impose a ban on processing has been adjusted by limiting the scope of such ban in Article 46(3)(f).

At the COPEN Working Party's discussion on the data protection provisions of the draft Eurojust Regulation, many delegates signaled that they were not in favor of the new supervisory mechanism proposed and consider that the current data protection regime at Eurojust which consists of specific data protection rules monitored by a Data Protection Officer (DPO) and a Joint Supervisory Body (JSB), is sufficiently robust and works well in practice. Some delegations also stated a preference to retain the JSB in some form in this new Eurojust Regulation. COPEN was reminded that the CLS addressed a similar issue in a written contribution (doc. 17615/13).

CATS is invited to consider whether the supervisory model envisaged in the draft Regulation on Eurojust could be made more appropriate for Eurojust by, for example, introducing in the draft Eurojust Regulation an improved cooperation mechanism between the EDPS and national supervisory authorities drawing inspiration from the latest draft of the Europol Regulation.