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From: Presidency
To: Working Party on Cooperation in Criminal Matters

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Subject: Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust)
- Revised text Articles 1 - 17

Delegates will find a revision of the Commission's proposal Articles 1-4 and Articles 5-17 of the text presented to COPEN by the Hellenic Presidency on 13 June 2014 (Doc.10526/14) in the Annex.

The changes in the text are highlighted in **bold** and ~~strikethrough~~.

CHAPTER I OBJECTIVE AND TASKS

Article 1

The European Union Agency for Criminal Justice Cooperation

1. The European Union Agency for Criminal Justice Cooperation (Eurojust) is hereby established.
2. Eurojust, as established by this Regulation, shall **replace and succeed** Eurojust as established by Council Decision 2002/187/JHA.
3. In each of the Member States, Eurojust shall **have legal personality** accorded to legal persons under their laws. ~~It may, in particular, acquire and dispose of movable and immovable property and be party to legal proceedings.~~

Article 2

Tasks

1. Eurojust shall support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States, or requiring a prosecution on common bases¹, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

¹ Recital 9 may need to be developed further to explain 'requiring a prosecution on a common bases'

2. In the implementation of its tasks Eurojust shall:
 - a) take into account any request emanating from a competent authority of a Member State or any information provided by **these authorities, by institutions and by any other** body competent by virtue of provisions adopted within the framework of the Treaties or collected by Eurojust itself;
 - b) facilitate the execution of requests for, and decisions on, judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition.
3. Eurojust shall exercise its tasks at the request of the competent authorities of the Member States or on its own initiative.²

Article 3

Competence of Eurojust

1. Eurojust's competence shall cover the forms of crime listed in Annex 1. **As regards offences falling under the competence of the European Public Prosecutor's Office, Eurojust exercises its competence if it is not exercised by the European Public Prosecutor.**
2. **For forms of crime other than those listed in Annex 1, Eurojust may also, in accordance with its tasks, assist in the investigations and prosecutions at the request of a competent authority of a Member State.**
3. Eurojust's competence shall cover related criminal offences. The following offences shall be regarded as related criminal offences:
 - a) criminal offences committed in order to procure the means of perpetrating acts listed in Annex 1;

² 'on its own initiative' may need to be explained in a Recital.

- b) criminal offences committed in order to facilitate or carry out acts listed in Annex 1;
 - c) criminal offences committed to ensure the impunity of acts listed in Annex 1.
4. At the request of a Member State's competent authority, Eurojust may also assist investigations and prosecutions affecting only that Member State and a third country where a cooperation agreement or arrangement establishing cooperation pursuant to Article 43 has been concluded with that third country or where in a specific case there is an essential interest in providing such assistance.
5. At the request either of a Member State's competent authority or of the Commission, Eurojust may assist investigations and prosecutions affecting only that Member State ~~and the Union~~ **but which have repercussions at Union level**³.

⁴Article 4

Operational functions of Eurojust

1. Eurojust shall:
- a) inform the competent authorities of the Member States of investigations and prosecutions of which it has been informed and which have repercussions at Union level or which might affect Member States other than those directly concerned;
 - b) assist the competent authorities of the Member States in ensuring the best possible coordination of investigations and prosecutions;

³ 'repercussions at Union level' may need to be explained in a Recital.

⁴ FR - reservation until the mandate of Eurojust and Europol regarding JITs is clarified.

- c) give assistance in order to improve cooperation between the competent authorities of the Member States, in particular on the basis of Europol's analyses;
 - d) cooperate and consult with the European Judicial Network in criminal matters, including making use of and contributing to the improvement of the documentary database of that European Judicial Network;
 - e) provide operational, technical and financial support to Member States' cross-border operations and investigations, **including joint investigation teams**.
2. In the exercise of its tasks, Eurojust may ask the competent authorities of the Member States concerned, giving its reasons, to:
- a) undertake an investigation or prosecution of specific acts;
 - b) accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
 - c) coordinate between the competent authorities of the Member States concerned;
 - d) set up a joint investigation team in accordance with the relevant cooperation instruments;
 - e) provide it with any information that is necessary to carry out its tasks;
 - f) take special investigative measures;
- g) take any other measure justified for the investigation or prosecution.

3. Eurojust may also:
 - a) provide Europol with opinions based on analyses carried out by Europol;
 - b) supply logistical support, including assistance for translation, interpretation and the organisation of coordination meetings.
4. Where two or more Member States cannot agree on which of them should undertake an investigation or prosecution following a request made under point (b) of paragraph 2, Eurojust shall issue a written opinion on the case. The **non-binding** opinion shall be promptly forwarded to the Member States concerned.
5. On request of a competent authority Eurojust shall issue a written opinion on recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition, provided it could not be resolved through mutual agreement between the competent national authorities or through the involvement of the national members concerned. The opinion shall be promptly forwarded to the Member States concerned.
6. The competent national authorities shall respond without undue delay to Eurojust's requests and opinions. Where the competent authorities of the Member States concerned decide not to comply with a request referred to in Article 4(2) or decide not to follow a written opinion referred to in Article 4(4) or (5), they shall inform Eurojust without undue delay of their decision and of the reasons for it. Where it is not possible to give the reasons for refusing to comply with a request because to do so would harm essential national security interests or would jeopardise the safety of individuals, the competent authorities of the Member States may cite operational reasons.

Article 5

Exercise of operational and other functions

1. Eurojust shall act through one or more of the national members concerned when taking any of the actions referred to in Article 4(1) or (2). **Without prejudice to paragraph 2, the College and the national members shall deal with operational issues and with other issues that are not expressly attributed to the Executive Board in this Regulation or which are not under the responsibility of the Administrative Director in accordance with Article 16.**
2. Eurojust shall act as a College:
 - a) when taking any of the actions referred to in Article 4(1) or (2):
 - (i) when so requested by one or more of the national members concerned by a case dealt with by Eurojust;
 - (ii) when the case involves investigations or prosecutions which have repercussions at Union level or which might affect Member States other than those directly concerned;
 - b) when taking any of the actions referred to in Article 4 (3), (4) or (5);
 - c) when a general question relating to the achievement of its operational objectives is involved;
 - d) when adopting the annual budget of Eurojust ~~and exercise other functions in respect of Eurojust's budget pursuant to Chapter VI;~~
 - e) when adopting the annual and multiannual programme and the annual report on Eurojust's activities;
 - f) when electing the President and Vice- Presidents in accordance with Article 11;

- g) when appointing the Administrative Director and where relevant extending his or her term of office or removing him or her from office in accordance with Article 16;
- h) when adopting working arrangements concluded in accordance with Article 43;
- i) when adopting rules for the prevention and management of conflicts of interest in respect of the national members;
- j) when preparing strategic reports, policy papers, guidelines for the benefit of national authorities and opinions pertaining to the operational work of Eurojust.
- ~~k) when taking any other decision which is not expressly attributed to the Executive Board in this Regulation or which is not under the responsibility of the Administrative Director in accordance with Article 16;~~
- ~~m~~ k) when otherwise provided for in this Regulation.

3. When it fulfils its tasks, Eurojust shall indicate whether it is acting through one or more of the national members or as a College.
4. The College may assign additional tasks to the Administrative Director and the Executive Board beyond those provided for in Articles 14 and 16 in line with its operational requirements.
- ~~5. Without prejudice to paragraph 2, the College and the national members shall only deal with operational issues and with such issues that are *inextricably linked* with operational matters. It shall not deal with administrative matters or matters otherwise dealt with by the Executive Board or the Administrative Director, except as provided for in this Regulation.~~
5. The College shall adopt its Rules of Procedure which shall be approved by the Council by means of implementing acts⁵. ~~after consent of the European Parliament.~~

⁵ A recital should be added to duly justify the conferral of implementing powers on the Council in accordance with Article 291(2) TFEU

CHAPTER II

STRUCTURE AND ORGANISATION OF EUROJUST

SECTION I

STRUCTURE

Article 6

Structure of Eurojust

The structure of Eurojust shall comprise:

- a) the national members;
- b) the College;
- c) the Executive Board;
- d) the Administrative Director

SECTION II

NATIONAL MEMBERS

Article 7

Status of national members

1. Eurojust shall have one national member seconded by each Member State in accordance with its legal system, who shall have his or her regular place of work at the seat of Eurojust.

2. Each national member shall be assisted by one deputy and by an Assistant. The deputy and the Assistant **shall in principle** have their regular place of work at **the seat of Eurojust** . **The College may accept that the Deputy and Assistant work in the Member State of origin on the basis of a request from that Member State.** More deputies or Assistants may assist the national member and may, if necessary and with the agreement of the College, have their regular place of work at Eurojust. The Member State shall notify Eurojust and the General Secretariat of the Council of the European Union of the designation of national members, deputies and Assistants.
3. The national members and deputies shall have a status as a prosecutor, judge or **law enforcement** officers of equivalent competence. **The national members shall have** the powers referred to in this Regulation in order to be able to fulfil their tasks.
4. The term of office of the members and their deputies shall be at least four years . Upon expiry of their term of office or in the event of their resignation, members shall remain in office until their term is renewed or until they are replaced.
5. The deputy shall be able to act on behalf of or to substitute the national member. An Assistant may also act on behalf of or substitute the national member if he or she has a status as referred to in paragraph 3.
6. Operational information exchanged between Eurojust and Member States shall be directed through the national members.
7. The salaries and emoluments of the national members, deputies and Assistants shall be borne by their Member State of origin **without prejudice to Article 11(5)**.
8. Where national members, deputies and Assistants act within the framework of Eurojust's tasks, the relevant expenditure related to these activities shall be regarded as operational expenditure.

Article 8⁶

Powers of national members

1. The national members shall have the power⁷ to:
 - a) facilitate or otherwise support the issuing and execution of any mutual legal assistance or mutual recognition request;
 - b) contact directly and exchange information with any national competent authority of the Member State;
 - c) contact directly and exchange information with any competent international authority, in accordance with the international commitments of their Member State;
 - d) participate in joint investigation teams including in their setting up.
2. **Without prejudice to Paragraph 1, Member States may grant additional powers to the national members in accordance with national legislation. When exercising these powers national members shall make this known to the other Member States. The Member State shall formally notify the Commission of these powers.**
3. In agreement with the competent national authority the national members shall in accordance with national law:
 - a) **issue and execute any mutual assistance or mutual recognition request;**
 - b) **order investigative measures, as laid down in Annex A to Directive 2014/41/EU of the European Parliament and of the Council of 3rd April 2014 regarding the European Investigation Order in criminal matters;**
 - c) authorise and coordinate controlled deliveries in the Member State

⁶ DE scrutiny reservation

⁷ A derogation similar to Art 9(e) of the 2008 Council Decision will be included as agreed by CATS on 25th February.

4. In urgent cases when timely agreement cannot be reached, the national members shall be competent to take the measures referred to in paragraph 3 **in accordance with national law** informing as soon as possible the national competent authority.

Article 9

Access to national registers

The national members shall have access to, or at least be able to obtain the information contained in, the following types of registers of their Member State, in accordance with national law:

- a) criminal records;
- b) registers of arrested persons;
- c) investigation registers;
- d) DNA registers;
- e) other registers of public authorities of their Member States where such information is necessary to fulfil their tasks.

SECTION III
THE COLLEGE

⁸*Article 10*

Composition of the College

1. The College shall be composed of all the national members, the President and **two** Vice Presidents.
2. The Administrative Director shall attend the meetings of the College, without the right to vote.
3. The College may invite any person whose opinion may be of interest to attend its meetings as an observer.
4. The members of the College may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

Article 11

The President and Vice-President of Eurojust

1. The College shall elect a President and two Vice-Presidents from among the national members by a two thirds majority of its members. **The President and Vice-Presidents shall be assisted in their work by the administrative staff.**
2. The Vice-Presidents shall replace the President if he or she is prevented from attending to his or her duties.
3. The term of office of the President and the Vice-Presidents shall be four years. They may be re-elected once.

⁸ CZ scrutiny reservation until status of National Members and deputies has been clarified.

4. When a national member is elected President or Vice-President of Eurojust, his or her term of office shall be extended to ensure that he or she can fulfil his or her function as President or Vice-President.
5. When a national member is elected President or Vice-President of Eurojust ~~he or she will no longer perform the functions of national member.~~ the Member State concerned ~~shall~~ **may** ~~either~~ second another suitably qualified person as a national member or increase the team of the national desk for the duration of the former's appointment as President or Vice-President. **The Member State concerned will be compensated for any costs incurred.**

Article 12

Meetings of the College

1. The President shall convene the meetings of the College.
2. The College shall hold at least one meeting per month. In addition, it shall meet on the initiative of the President or at the request of at least one fifth of its members.
3. The European Public Prosecutor shall receive the agendas of all College meetings and **shall** be invited by the College to participate in such meetings in accordance with Article 10(3), without the right to vote, whenever issues are discussed which may be of relevance for the functioning of the European Public Prosecutor's Office.

Article 13

Voting rules of the College

1. Unless stated otherwise, the College shall take its decisions by a majority of its members..
2. Each member shall have one vote. In the absence of a voting member, the deputy shall be entitled to exercise the right to vote in accordance with Article 7(5).
3. **The President or Vice-President will not have a vote if they have been replaced as national member in accordance with Article 11(5).**

SECTION IV
THE EXECUTIVE BOARD

Article 14

Functioning of the Executive Board

1. The College shall be assisted by an Executive Board. The Executive Board shall be responsible for the ~~day to day running of the College~~ and will undertake the necessary preparatory work on administrative matters for the College's approval. It shall not be involved in the operational functions of Eurojust referred to in Articles 4 and 5. **The Executive Board shall be accountable to the College.**
2. The Executive Board shall consult the College when preparing the annual budget for Eurojust, the annual report and the annual and multi-annual work programmes and may obtain other non-operational information from the College, if necessary for it to be able to perform its tasks.
3. The Executive Board shall:
 - a) approve Eurojust's annual and multi-annual work programmes based on the draft prepared by the Administrative Director and forward them to the College for adoption;
 - b) take all decisions on the establishment and, where necessary, the modification of Eurojust's internal administrative structures;
 - c) undertake any additional administrative tasks assigned to it by the College under Article 5(4).
 - d) prepare the annual budget of Eurojust for adoption by the College;

- e) approve the annual report on Eurojust's activities and forward to the College for adoption. Once adopted, the annual report shall be sent to the to the European Parliament, national parliaments, the Council, the Commission and the Court of Auditors, and made public;
 - f) adopt the financial rules applicable to Eurojust in accordance with Article 52;
 - g) appoint an Accounting Officer and a Data Protection Officer who shall be functionally independent in the performance of their duties;
 - h) adopt an anti-fraud strategy for Eurojust based on a draft prepared by the Administrative Director;
 - i) adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
 - j) ensure adequate follow-up to the findings and recommendations stemming from the internal or external audit reports, evaluations and investigations to the extent they are not linked with the operational work of the College, including those of the European Data Protection Supervisor (EDPS) and the European Anti-fraud Office (OLAF);
 - k) approve its rules of procedure which shall be adopted by the College.
4. The Executive Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Administrative Director and defining the conditions under which this delegation of powers can be suspended. The Administrative Director shall be authorised to sub-delegate these powers.

5. The Executive Board shall be composed of the President and Vice-Presidents of the College, one representative of the Commission, two other members of the College designated on a two year rotation system in accordance with the Rules of Procedure of the College and the Administrative Director.
6. The President of the College shall be the Chairperson of the Executive Board. The Executive Board shall take its decisions by a majority of its members. Each member, with the exception of the Administrative Director, shall have one vote. **In the event of a tie vote, the President will have the casting vote.**
7. The term of office of members of the Executive Board shall end when their term as national members, President or Vice-President ends.
8. The Executive Board shall meet **at least** once a month. In addition, it shall meet on the initiative of its Chairperson or at the request of the Commission or at least two of its other members.
9. **The European Public Prosecutor shall receive the agendas of all Executive Board meetings and shall be free to participate in such meetings, without the right to vote, whenever issues are discussed which may be of relevance for the functioning of the European Public Prosecutor's Office.**
10. The European Public Prosecutor may address written opinions to the Executive Board, to which the Executive Board shall respond in writing without undue delay.

Article 15⁹

Annual and multi-annual programming

1. By [30 November each year] the College shall adopt a programming document containing a multi-annual and annual work programme, based on a draft put forward by the Administrative Director and approved by the Executive Board. It shall forward it to the European Parliament, the Council and the Commission. The work programme shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.
2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate which tasks have been added, changed or deleted in comparison with the previous financial year.
3. The Executive Board shall amend the adopted annual work programme when a new task is given to Eurojust. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Executive Board may delegate to the Administrative Director the power to make non-substantial amendments to the annual work programme, while keeping the Executive Board informed of any such amendment.
4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 56.

⁹ COM scrutiny reservation

SECTION V
THE ADMINISTRATIVE DIRECTOR

Article 176

Status of the Administrative Director

1. The Administrative Director shall be engaged as a temporary agent of Eurojust under Article 2(a) of the Conditions of Employment of Other Servants of the European Union.
2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the Executive Board, following an open and transparent selection procedure in accordance with its Rules of Procedure. For the purpose of concluding the contract of the Administrative Director, Eurojust shall be represented by the President of the College.
3. The term of office of the Administrative Director shall be ~~five~~ **four** years. By the end of this period, the Executive Board shall undertake an assessment which takes into account an evaluation of the performance of the Administrative Director.
4. The College, acting on a proposal from the Executive Board which takes into account the assessment referred to in paragraph 3, may extend once the term of office of the Administrative Director for no more than four years.
5. An Administrative Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The Administrative Director shall be accountable to the College.

7. The Administrative Director may be removed from the office only upon a decision of the College on the basis of a two-thirds majority of its members.

Article 187

Responsibilities of the Administrative Director

1. For administrative purposes, Eurojust shall be managed by its Administrative Director.
2. Without prejudice to the powers of the College or the Executive Board, the Administrative Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or from any other body.
3. The Administrative Director shall be the legal representative of Eurojust.
4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to Eurojust. In particular, the Administrative Director shall be responsible for:
 - a) the day-to-day administration of Eurojust and staff management;
 - b) implementing the decisions adopted by the College and the Executive Board;
 - c) preparing the annual and multi-annual work programme and submitting it to the Executive Board for approval ~~and the College for adoption;~~
 - d) implementing the **annual and multi-annual** work programme and reporting to the Executive Board on its implementation;
 - e) preparing the annual report on Eurojust's activities and presenting it to the Executive Board for approval ~~and to the College for adoption;~~

- f) preparing an action plan following-up on the conclusions of the internal or external audit reports, evaluations and investigations, including those of the European Data Protection Supervisor and OLAF and reporting on progress twice a year to the Executive Board, the College, the Commission and the European Data Protection Supervisor;
- g) preparing an anti-fraud strategy for Eurojust and presenting it to the Executive Board for approval;
- h) preparing the draft financial rules applicable to Eurojust;
- i) preparing Eurojust's draft statement of estimates of revenue and expenditure and implementing its budget;
- j) exercising, with respect to the staff of the Agency, the powers conferred by the Staff Regulations¹⁰ on the Appointing Authority and by the Conditions of Employment of Other Servants¹¹ on the Authority Empowered to conclude Contracts of Employment ("the appointing authority powers");
- k) ~~supporting the~~ **providing necessary administrative support to facilitate the** operational work of Eurojust.
- l) **providing support to the President and Vice-Presidents in the carrying out of their duties.**

¹⁰ Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations for Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.6.1962, p. 1385, as amended, in particular, by Council Regulation 259/68, of 29 February 1968 (OJ L 56, 4.3.1968, p. 1), as itself subsequently amended.

¹¹ Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations for Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.6.1962, p. 1385, as amended, in particular, by Council Regulation 259/68, of 29 February 1968 (OJ L 56, 4.3.1968, p. 1), as itself subsequently amended.

List of forms of serious crime which Eurojust is competent to deal with in accordance with Article 3(1):

- terrorism,
- organised crime,
- drug trafficking,
- money-laundering **activities**,
- crime connected with nuclear and radioactive substances,
- illegal immigrant smuggling,
- trafficking in human beings,
- motor vehicle crime,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage taking,
- racism and xenophobia,
- ~~organised~~ robbery **and aggravated theft**,
- illicit trafficking in cultural goods, including antiquities and works of art,
- swindling and fraud,

- crime against the financial interests of the Union,
 - insider dealing and financial market manipulation,
 - racketeering and extortion,
 - counterfeiting and product piracy,
 - forgery of administrative documents and trafficking therein,
 - forgery of money and means of payment,
 - computer crime,
 - corruption,
 - illicit trafficking in arms, ammunition and explosives,
 - illicit trafficking in endangered animal species,
 - illicit trafficking in endangered plant species and varieties,
 - environmental crime, including ship source pollution,
 - illicit trafficking in hormonal substances and other growth promoters,
 - sexual abuse and **sexual exploitation including child pornography and solicitation of children for sexual purposes,**
 - genocide, crimes against humanity and war crimes.
 - *unlawful seizure of aircraft/ships*
-