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From: Mr Ladislav Hamran, Vice-President of Eurojust
On: 22 January 2015
To: Delegations

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Subject: Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) - Invitation to Eurojust to provide a written contribution to the Working Party on Cooperation in Criminal Matters COPEN (Eurojust Regulation) on a data protection supervisory regime to Eurojust

Delegations will find attached a letter from Mr Hamran, Vice President of Eurojust , for attention of Ms Krutko regarding the "Invitation to Eurojust to provide a written contribution to the Working Party on Cooperation in Criminal Matters COPEN (Eurojust Regulation) on a data protection supervisory regime of Eurojust".

Please note that the document referred to page 4 (10622/14) was circulated by the General Secretariat on 5 June 2014.



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D150010

Ms Vineta Krutko
Chair of the COPEN (Eurojust) Working Party
Council of the European Union
B-1049 Brussels

The Hague, 22 January 2015

Eurojust contribution on a data protection supervisory regime of Eurojust

Dear Ms Krutko,

In response to your letter dated 19 January 2015, I wish to thank you for providing Eurojust with the opportunity to contribute to the work of the Working Party related to the proposal for a Regulation on Eurojust. We highly appreciated the invitation to attend the meeting of COPEN scheduled for 27 January 2015 to discuss Article 59 of the proposal related to confidentiality. I am pleased to confirm that Eurojust will be represented at the COPEN meeting.

You have also kindly offered Eurojust the opportunity to provide written comments or observations on the revised text of Chapter IV of the proposal on a Regulation on Eurojust related to data protection, in particular on the supervision model which has been inspired by the draft Europol Regulation and on whether Eurojust finds the closed list provided in Annex II sufficiently comprehensive. Eurojust would like to offer the following comments¹.

1. The proposed model of supervision inspired by the draft Europol Regulation

Eurojust understands that, at this stage of the negotiations in the Council Working Party on the proposal for a Regulation on Eurojust, delegations wish to introduce a supervision scheme in line with the regime of the other EU Institutions, Agencies and Bodies, and in particular with the supervisory scheme agreed in the Council for the proposal for a Regulation on Europol.

While the wish to have consistent systems and approaches is understandable, the proposed Europol scheme is not designed to take into account the judicial nature of the work and the structure of Eurojust.

Eurojust would therefore like to underline that, whatever supervisory model is put in place, it should take into account:

¹ Previous contributions of Eurojust regarding data protection in the Regulation are available at <http://www.eurojust.europa.eu/Practitioners/Data-Protection/Pages/data-protection-after-lisbon.aspx>, as well as the extensive contribution of Eurojust of 4 April 2014 published as Council Document 8488/14.



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I. The different role and structure of Eurojust, Europol and the Europol National Units

The judicial nature of the work of Eurojust, mainly regarding the role of the Eurojust National Members as judicial authorities, is to be considered.

While Europol's main task is to exchange and analyse information (information broker), the National Members of Eurojust have the power to take judicial decisions under certain circumstances, such as to authorise judicial measures, participate in Joint Investigation Teams, receive and execute Mutual Legal Assistance requests and authorise controlled deliveries.

The functioning of Europol and the Europol National Units is not the same as the one of Eurojust and its National Desks. Eurojust operates through the College and the National Members as an integral part of the organisation, whilst the Liaison Offices at Europol are only governed by national data protection rules and not the ones applicable to Europol. Eurojust National Desks process data coming from the Member States and revert back to them with the outcome of facilitation, cooperation or coordination. They do so in compliance with the Eurojust legal framework.

Therefore, the National Members at Eurojust have a different status from Liaison Officers at Europol. The Eurojust National Members are judges and prosecutors, and acting in this capacity (generally upon request) in the field of judicial cooperation and coordination, they process personal data provided by the national judicial authorities and later on used in the context of judicial proceedings in one or more Member States. Moreover, personal data processed by National Members are part of national proceedings, and in some cases this is protected by the principle of secrecy of judicial proceedings in the Member States.

It also gives rise to concerns that a supervisor could order the erasure or destruction of data contained in judicial decisions taken by National Members of Eurojust (in accordance with their respective national law) which form an integral part of national criminal proceedings and which may be subject to judicial review in the national proceedings in the Member States at a later stage.

II. The additional administrative burden and time consuming procedures which could hamper the operational work of Eurojust

Regulation (EC) No 45/2001, which defines the mandate, tasks and powers of the European Data Protection Supervisor (EDPS), was designed for the processing of data of an administrative nature and is suitable in that context, but it is not workable for the processing of information in the law enforcement and judicial cooperation area. Eurojust needs to operate in an efficient and timely manner in matters which require an urgent response, such as controlled deliveries. In such a context complicated and time-consuming administrative procedures could seriously hamper the proper functioning of Eurojust.

For the sake of legal certainty, language should be inserted in the draft Eurojust Regulation which clarifies that, in relation to operational personal data at Eurojust, the competencies of the supervisory authority are exclusively set out in the draft Eurojust Regulation and that no additional competencies can be inferred from other legal instruments applicable to the supervisor (such as Regulation 45/2001).



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III. The proper involvement of Eurojust in the supervision scheme

Eurojust considers that direct interaction and contact with whatever supervisor is designated should be the basis for a good and open working relationship ensuring that the supervisor is properly informed about the work of Eurojust and about any relevant developments in the organisation regarding processing of personal data. When discussions regarding data protection at Eurojust take place, the presence and input of Eurojust, through the presence of its Data Protection Officer at least, should be ensured to guarantee proper interaction between Eurojust and its supervisor.

IV. Cost effectiveness

So far the existing supervisory scheme is carried out for less than € 40,000 a year. Eurojust would like to underline that any envisaged system should be cost efficient and not lead to additional expenses of the organisation due to supplementary administrative requirements or required staff.

2. The list of personal data included in Annex II of the proposal for a Regulation on Eurojust

Eurojust has commented on the list of personal data presently included in Article 15 of the Eurojust Council Decision and foreseen in Annex II of the draft Regulation on Eurojust in its contribution published as Council document 10622/14 of 5 June 2014 (~~encl. 1~~).

As the comments and suggestions of Eurojust have been taken on board in the present draft Annex II, Eurojust sees no need to further comment on this issue at this stage.

3. Revised Chapter IV on data protection in general

Eurojust has received the revised version of Chapter IV of the proposal for a Regulation of Eurojust as proposed by the Latvian Presidency as well as the comments of the various Member States too late to allow a proper consideration by the given deadline of 21 January 2015.

Eurojust would appreciate being given the opportunity to contribute at a later stage (and before closing the discussions) on other aspects of this Chapter IV not dealt within this short contribution particularly devoted to the supervisory scheme.

Please contact me if further information should be required.

Yours sincerely,

Ladislav Hamran
Vice-President of Eurojust

Encl.

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