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**NOTE**

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From:	Presidency
To:	Delegations
No. prev. doc.:	5824/15 EUROJUST 21 EPPO 12 CATS 18 COPEN 23 CODEC 132
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Subject:	Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) - Written comments by Member States on the Recitals

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Delegates will find comments received from the Czech Republic and the Netherlands in relation to the draft Recitals (document 5824/15) in the Annex.

Czech Republic

11)

To ensure Eurojust can appropriately support and coordinate cross-border investigations, it is necessary that all national members have the same operational powers in order to cooperate between themselves and with national authorities in a more effective way. National members should be granted those powers that allow Eurojust to appropriately achieve its mission. These powers should include accessing relevant information in national public registers, ~~issuing and executing mutual assistance and recognition requests~~, **and** directly contacting and exchanging information with competent authorities. ~~participating in joint investigation teams and, in agreement with the competent national authority or in case of urgency, ordering investigative measures and controlled deliveries.~~ **National Members should maintain the powers which are derived from their capacity as national authorities.**

**Justification:** While the explicit reference to the fact that the national member uses certain powers in his capacity as a national authority has been abandoned, it should be understood that the national member still has the powers as a national authority (judge, public prosecutor or police officer) according to the national law and can use them while being located in Eurojust. As it is not clear from the text itself, CZ is of the opinion that there should be a reference in this sense at least in the recitals.

14)

To improve Eurojust's governance and streamline procedures, an Executive Board should be established to assist the College in its management functions and to allow for streamlined decision-making on non-operational and strategic issues. **It should be understood that it is the College to whom the Executive Board should be generally accountable.**

**Justification:** Executive Board is established from the College and it is designed to assist the College, it is therefore self evident that in general it is accountable to the College. CZ is of the opinion, that should it not be in the text of the regulation itself, it should at least be in the recitals.

For the purposes of stimulating and strengthening coordination and cooperation between national investigating and prosecuting authorities it is crucial that Eurojust receives relevant information from national authorities necessary for the performance of its tasks. To this end, **especially in order to reveal possible links between cases in various Member States**, the national competent authorities should inform their national members of the setting up and results of joint investigation teams, of cases under the competence of Eurojust directly involving at least three Member States and for which requests or decisions on judicial cooperation have been transmitted to at least two Member States, as well as, under certain circumstances, information on conflicts of jurisdiction, controlled deliveries and repeated difficulties in judicial cooperation. **The notion of conflict of jurisdiction should be understood as the exercise of the conflict of jurisdiction which has already been performed and a conflict which is likely to arise should be understood as a case which has specific indications that parallel criminal proceedings is probably conducted in another Member state.**

**Justification:** CZ feels that one of the reasons that the national authorities are reluctant to send the information according to art. 21 to Eurojust is that the instrument itself does not tell them, why the information is needed. Therefore we have incorporated one of the main goals of the information exchange in the recital.

Secondly, when talking about conflicts of jurisdiction according to par. 6a) questions has arisen, what is the range of cases which are encompassed in this provision. CZ feels the need that it should be further explained to provide guidance for the national authorities.

20a)

Data protection rules at Eurojust should be strengthened and draw on the principles underpinning Regulation (EC) No 45/2001 **in particular when processing non-operational personal data not related to any criminal investigations** to ensure a high level of protection of individuals with regard to processing of personal data. As Declaration 21 attached to the Treaty recognises the specificity of personal data processing in the field of judicial cooperation in criminal matters, the data protection rules of Eurojust should be autonomous and aligned with other relevant data protection instruments applicable in the area of judicial cooperation in the Union, in particular Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data.

**Justification:** We have moved the content of recital 20g) in 20a), so that we avoid doubling the recitals. 20g) would be then deleted.

20b – 20i)

CZ is of the opinion that these recitals have the same content as the provisions in Chapter IV. Recitals should not be repeating the text itself, therefore we would cross them out.

28)

**Without prejudice to the bilateral relations between the Member State and the third state in question,** provision should be made for Eurojust to post liaison magistrates to third countries in order to achieve objectives similar to those assigned to liaison magistrates seconded by the Member States on the basis of Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union.

**Justification:** Even though many regulation readers might find the inserted rule clear, but since it is not explicitly stated in the regulation, as well as the exact nature of the liaison magistrates is not fully described in the provisions, CZ has the need to refer to this rule at least in the recitals.

29)

We do not see the necessity to have a recital in this sense, since we have an identical Article 43b. Recitals should not be repeating the text itself.

## The Netherlands

- (11) To ensure Eurojust can appropriately support and coordinate cross-border investigations, it is necessary that all national members have the same operational powers **with respect to their Member State of origin** in order to cooperate between themselves and with national authorities in a more effective way. National members should be granted those powers that allow Eurojust to appropriately achieve its mission. These powers should include accessing relevant information in national public registers; ~~issuing and executing mutual assistance and recognition requests,~~ **and** directly contacting and exchanging information with competent authorities. ~~participating in joint investigation teams and, in agreement with the competent national authority or in case of urgency, ordering investigative measures and controlled deliveries.~~
- (18) Eurojust national coordination systems should be set up in the Member States to coordinate the work carried out by the national correspondents for Eurojust, the national correspondent for Eurojust for terrorism matters, the national correspondent for the European Judicial Network and up to three other contact points, as well as representatives in the Network for Joint Investigation Teams and of the networks set up by Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes<sup>1</sup>, Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime, ~~and by~~ Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption **and, where applicable, any other relevant judicial authority.**

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<sup>1</sup> OJ L 167, 26.6.2002, p.1.

(20a) Data protection rules at Eurojust should be strengthened and draw on the principles underpinning Regulation (EC) No 45/2001<sup>2</sup> to ensure a high level of protection of individuals with regard to processing of personal data. As Declaration 21 attached to the Treaty recognises the specificity of personal data processing in the field of judicial cooperation in criminal matters, the data protection rules of Eurojust should be autonomous and aligned with other relevant data protection instruments applicable in the area of judicial cooperation in the Union, in particular the Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data

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<sup>2</sup> OJ L 8, 12.1.2001, p. 1.

- (29) Provision should be made for Eurojust to coordinate, **with the agreement of the Member States concerned,** the execution of requests for judicial cooperation issued by a third country ~~when they relate to a single investigation~~ and **where these requests** require execution in at least two Member States **as part of the same investigation.**
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