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5916/15 EUROJUST 26 EPPO 13 CATS 19 COPEN 30 CODEC 139

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Subject: Proposal for a Regulation on the European Union Agency for Criminal
Justice Cooperation (Eurojust)
- Revised text on Chapter IV, Recitals, Articles 59, 59a, 62, 66
and Annex II

Delegates will find revised text on the provisions listed above attached in the Annex.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the European Union Agency for Criminal Justice Cooperation (Eurojust)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 85 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

~~After consulting the European Data Protection Supervisor,~~

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Eurojust was set up by Council Decision 2002/187/JHA¹ as a body of the European Union with legal personality to stimulate and to improve coordination and cooperation between competent judicial authorities of the Member States, particularly in relation to serious organised crime. Council Decision 2003/659/JHA² and Council Decision 2009/426/JHA³ on the strengthening of Eurojust amended Eurojust's legal framework.

¹ OJ L 63, 6.3.2002, p. 1.

² OJ L 245, 29.9.2003, p. 44.

³ OJ L 138, 4.6.2009, p.14.

- (2) Article 85 of the Treaty provides for Eurojust to be governed by a regulation, adopted in accordance with the ordinary legislative procedure. It also requires determining arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.
- (3) Article 85 of the Treaty also provides that Eurojust's mission shall be to 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 bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.
- (3a) **⁴This Regulation aims to amend and expand the provisions of Decision 2002/187/JHA and 2009/426/JHA. Since the amendments to be made are of substantial number and nature, this Decision should in the interests of clarity be replaced in its entirety in relation to the Member States bound by this Regulation.**
- [(4) Since the European Public Prosecutor's Office should be established from Eurojust, this Regulation includes the provisions necessary to regulate the relations between Eurojust and the European Public Prosecutor's Office.
- (5) Whilst the European Public Prosecutor's Office should have exclusive competence to investigate and prosecute crimes affecting the Union's financial interests, Eurojust should be able to support national authorities when they are investigating and prosecuting these forms of crime in accordance with the Regulation establishing the European Public Prosecutor's Office.]⁵

⁴ CION reservation linked to its position on Article 67.

⁵ Recitals 4 and 5 are in square brackets as they relate to EPPO and will be outside of the general approach.

- (6) In order for Eurojust to fulfil its mission and develop all its potential in the fight against serious cross-border crime, its operational functions should be strengthened by reducing the administrative workload of national members, and its European dimension enhanced through the Commission's participation in the ~~management of the agency~~⁶ **Executive Board** and the increased involvement of the European Parliament and national Parliaments in the evaluation of its activities.
- (7) Therefore, ~~Council Decision 2002/187/JHA should be repealed and replaced by this Regulation~~ **should** determine~~ing~~ arrangements for parliamentary involvement, modernising its structure and simplifying Eurojust's current legal framework, whilst maintaining those elements that have proven to be efficient in its operation.
- ~~(8)⁷— This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.~~
- (9) The forms of serious crime affecting two or more Member States for which Eurojust is competent should be laid down. In addition, cases which do not involve two or more Member States, but which require a prosecution on common bases, should be defined. ~~Such cases should include investigations and prosecutions affecting only one Member State and a third State, as well as cases affecting only one Member State and the Union.~~
- (9a) Prosecution on a common bases refers to cases of prosecutions and investigations which may affect only one Member State and a third country where an agreement has been concluded or where there may be a specific need for Eurojust's involvement. It may also refer to cases which affect one Member State and the Union.*

⁶ CION reservation.

⁷ Moved to (39b).

- (10) When exercising its operational functions in relation to concrete criminal cases, at the request of competent authorities of Member States or on its own initiative, Eurojust should act either through one or more of the national members or as a College. *By acting on its own initiative Eurojust may take a more proactive role in co-ordinating cases such as supporting the national authorities in their investigations and prosecutions. This may include involving Member States who may not have initially been included in the case and discovering links between cases based on the information it receives from Europol, OLAF, [the European Public Prosecutors Office] and national authorities. It also allows Eurojust to produce guidelines, policy documents and casework related analyses as part of its strategic work. When acting on its own initiative it should do so in accordance with this Regulation⁸.*
- (10a) **At the request of a Member State's competent authority or the Commission, Eurojust may also assist investigations involving only that Member State but which have repercussions at Union level. Examples of cases which have repercussions at Union level include those where a member of an EU institution or body is involved. It also covers cases which involve a significant number of Member States and could potentially require a coordinated European response.⁹**
- (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.~~ **National Members should may, in accordance with their national law, retain the powers which are derived from their capacity as national authorities.**

⁸ Additional text agreed in Partial General Approach.

⁹ Recital 10a is part of Partial General Approach.

- (11a) **In addition, national members may, in agreement with the competent national authority or in case of urgency, order investigative measures and controlled deliveries, issue and execute mutual assistance and recognition requests and participate in joint investigation teams. In principle, however, these powers should be exercised by the competent national authority.** ¹⁰
- (12) It is necessary to provide Eurojust with an administrative and management structure that allows it to perform its tasks more effectively and respects the principles applicable to Union agencies whilst maintaining Eurojust's special characteristics and safeguarding its independence in the exercise of its operational functions. To this end, the functions of the national members, the College and the Administrative Director should be clarified and an Executive Board established.
- (13) Provisions should be laid down to clearly distinguish between the operational and the management functions of the College, reducing the administrative burden on national members to the minimum so that the focus is put on Eurojust's operational work. The management tasks of the College should include in particular the adoption of Eurojust's work programmes, budget, annual activity report, and working arrangements with partners. It should exercise the power of appointing authority towards ~~staff of the agency including~~ the Administrative Director. **The College should also adopt the Rules of Procedure of Eurojust. Since those rules may have an impact on the judicial activities of the Member States, it is of the utmost importance to confer on the Council implementing powers to approve those rules.**
- (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.
- (15) The Commission should be represented ¹¹ ~~in the College when it exercises its management functions and~~ in the Executive Board, to ensure non-operational supervision and strategic guidance of Eurojust.

¹⁰ It was agreed in the Partial General Approach that a recital to this effect would be included.

¹¹ CION reservation.

- (16) In order to ensure an efficient day-to-day administration of Eurojust, the Administrative Director should be its legal representative and manager, accountable to the College ~~and the Executive Board~~. The Administrative Director should prepare and implement the decisions of the College and the Executive Board.
- (16a) A President and two Vice-Presidents should be elected by the College from among the national members for a term of office of four years. When a national member is elected to one of these positions, the Member State concerned may second another suitably qualified person to the national desk and apply for compensation from the Eurojust budget.**
- (16b) *Suitably qualified persons are persons that have the necessary qualifications and experience to perform the tasks required to ensure that the national desk functions effectively. In this respect, they may have the status of the deputy or Assistant as set out in Article 7 or alternatively they may have a more administrative or technical function. Each Member State may decide on its own requirements in this regard.*
- (16c) Since the determination of the compensation model has a budgetary impact this Regulation should confer on the Council implementing powers to determine that model.**
- (17) The setting up of an On-Call Coordination (OCC) within Eurojust is necessary to make Eurojust available around the clock and to enable it to intervene in urgent cases. It should be the responsibility of each Member State to ensure that their representatives in the OCC are able to act on a 24-hour/7-day basis.

- (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 crimes¹², 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 crime¹³, ~~and by~~ Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption¹⁴ **and, where applicable, any other relevant judicial authority.**
- (19) 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, 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.
- (20) *Whilst the processing of administrative personal data at Eurojust falls under the scope of Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹⁵, the processing of personal data by the Member State's authorities and the transfer of such data to Eurojust are covered by the Council of Europe Convention 108 [to be replaced by the relevant Directive in force at the moment of adoption].*

¹² OJ L 167, 26.6.2002, p.1.

¹³ OJ L 332, 18.12.2007, p.103.

¹⁴ OJ L 301, 12.11.2008, p.38.

¹⁵ OJ L 8, 12.1.2001, p. 1

- (20a) Data protection rules at Eurojust should be strengthened and draw on the principles underpinning Regulation (EC) No 45/2001¹⁶ 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 ~~could~~ should be specific 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 data¹⁷.
- (20b) Eurojust should keep records of collection, alteration, access, disclosure, combination, transmission or erasure of personal data for the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security. Eurojust should be obliged to co-operate with the European Data Protection Supervisor and make the logs or documentation available upon request, so that they can be used for monitoring processing operations.
- (20c) Eurojust should designate a data protection officer to ensure the internal data protection supervision, assist it in monitoring compliance with the provisions of this Regulation. The data protection officer should be in a position to perform his/her duties and tasks independently and effectively.

¹⁶ OJ L 8, 12.1.2001, p. 1.

¹⁷ *It is assumed that the draft Directive (which is part of the data protection package, doc. 5833/12) will be adopted before the Eurojust Regulation. If not, a more general reference to Union legislation will be inserted at a later stage.*

- (20d) National supervisory authorities responsible for the supervision of the processing of operational personal data should ~~monitor~~oversee the lawfulness of the exchange of operational personal data between Member States and Eurojust. The European Data Protection Supervisor should monitor the lawfulness of data processing by Eurojust exercising its functions with complete independence.
- (20e) It is important to ensure a strengthened and effective supervision of Eurojust and to guarantee that appropriate judicial cooperation data protection expertise is available to the European Data Protection Supervisor when it takes on the responsibility for data protection supervision of Eurojust. The European Data Protection Supervisor and national supervisory authorities should closely co-operate with each other on specific issues requiring national involvement and to ensure coherent application of this Regulation throughout the Union. To ensure that specialist expertise is maintained, the European Data Protection Supervisor should co-operate with the national supervisory authorities in carrying out his/her duties, on the basis of this regulation and settled ECJ case law, aiming at using their expertise and experience, while maximising available resources and pooling expertise both at national and at Union level.

- (20f) In order to facilitate the cooperation between the European Data Protection Supervisor and the national supervisory authorities, they should regularly meet within the Cooperation Board which should deliver opinions, guidelines, recommendations and best practices on various issues requiring national involvement.
- ~~(20g) Where Eurojust is processing administrative personal data, not related to any criminal investigations, processing of such data should be subject to Regulation (EC) No 45/2001.~~
- (20ig) The European Data Protection Supervisor should hear and investigate complaints lodged by data subjects. The supervisory authority should inform the data subject of progress and the outcome of the complaint within a reasonable period.
- (20ih) Any individual should have the right to a judicial remedy against decisions of the European Data Protection Supervisor concerning him/her.
- (21) When Eurojust transfers **operational** personal data to an authority of a third country or to an international organisation or Interpol by virtue of an international agreement concluded pursuant to Article 218 of the Treaty the adequate safeguards adduced with respect to the protection of privacy and fundamental rights and freedoms of individuals have to ensure that the data protection provisions of this Regulation are complied with.
- (22) Eurojust should be authorised to process certain **operational** personal data on persons who, under the national ~~legislation~~ **law** of the Member States concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Eurojust is competent, or who have been convicted of such an offence. ~~It is not intended that Eurojust carry out an automated comparison of DNA profiles or fingerprints.~~

- (23) **In exceptional cases**, Eurojust should be **able** ~~given the opportunity~~ to extend the deadlines for storage of **operational** personal data, subject to observance of the purpose limitation principle applicable to processing of personal data in the context of all activities of Eurojust, in order to achieve its objectives. Such decisions should be taken following careful consideration of all interests at stake, including those of the data subjects. Any extension of deadlines for processing personal data, where prosecution is statute barred in all Member States concerned, should be decided only where there is a specific need to provide assistance under this Regulation.
- (24) Eurojust should maintain privileged relations with the European Judicial Network based on consultation and complementarity. This Regulation should help clarify the respective roles of Eurojust and the European Judicial Network and their mutual relations, while maintaining the specificity of the European Judicial Network.
- (25) Eurojust should maintain cooperative relations with other Union bodies and agencies, [with the European Public Prosecutor's Office], with the competent authorities of third countries as well as with international organisations, to the extent required for the accomplishment of its tasks.
- (26) To enhance operational cooperation between Eurojust and Europol, and particularly to establish links between data already in the possession of either body, Eurojust should enable Europol to have access **on the basis of a hit/no hit system** to ~~and be able to search against~~ data available at Eurojust.
- (26a) *Eurojust and Europol should ensure that necessary arrangements are established to optimise their operational cooperation, taking due account of their respective missions and mandates and of the interests of Member States. In particular, Europol and Eurojust should keep each other informed of any activity involving the financing of Joint Investigation Teams.*
- (27) Eurojust should be able to exchange **operational** personal data with other Union bodies to the extent necessary for the accomplishment of its tasks.

- (28) 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 Union¹⁸.
- (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**.
- (30) To guarantee the full autonomy and independence of Eurojust, it should be granted an autonomous budget, with revenue coming essentially from a contribution from the budget of the Union, except as regards the salaries and emoluments of the national members and assisting persons, which are borne by their Member State of origin. The Union budgetary procedure should be applicable as far as the Union contribution and other subsidies chargeable to the general budget of the Union are concerned. The auditing of accounts should be undertaken by the Court of Auditors.
- (31) In order to increase the transparency and democratic oversight of Eurojust it is necessary to provide mechanisms for the involvement of the European Parliament and national Parliaments in the evaluation of Eurojust's activities. This should not hinder the principles of independence as regards action taken in specific operational cases or the obligations of discretion and confidentiality.
- (32) It is appropriate to evaluate regularly the application of this Regulation.
- (32a) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents should apply to documents which relate to Eurojust's administrative tasks. Documents which relate to operational tasks should be excluded because of the inherent risk that the disclosure of the documents undermines ongoing investigations and court proceedings of Member States' judicial authorities.¹⁹***

¹⁸ OJ L 105, 27.04.1996, p.1.

¹⁹ Recital 32a agreed in Partial General Approach. SE and FI reservation.

(32aa) Option 1: this Regulation allows the principle of public access to be taken into account

Option 2: Nothing in this Regulation is intended to restrict the right of public access to documents in so far it is guaranteed in the Union and in the Member States, in particular under Article 42 of the Charter and other relevant provisions

- (33) Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002²⁰ should apply to Eurojust.
- (34) Regulation (EC) No. ~~1073/1999~~ **883/2013** of the European Parliament and of the Council of ~~25 May 1999~~ concerning investigations conducted by the European Anti-Fraud Office (OLAF)²¹ should apply to Eurojust.
- (35) The necessary provisions regarding accommodation for Eurojust in the Member State in which it has its headquarters, that is to say in the Netherlands, and the specific rules applicable to all Eurojust's staff and members of their families should be laid down in a headquarters agreement. ~~Furthermore, the host Member State should provide the best possible conditions to ensure the proper functioning of Eurojust, including schools for children and transport, so as to attract high quality human resources from as wide a geographical area as possible.~~
- (36) As Eurojust as set up by this Regulation replaces and succeeds Eurojust as established on the basis of Decision 2002/187/JHA, it should be the legal successor of Eurojust with respect to all its contractual obligations, including employment contracts, liabilities and properties acquired. International agreements concluded by Eurojust as established on the basis of that Decision should remain in force.

²⁰ OJ L 298, 26.10.2012, p.1.

²¹ OJ L 136, 248, 18.9.2013, p. 1

- (37) Since the objective of this Regulation, namely the setting up of an entity responsible for supporting and strengthening coordination and cooperation between judicial authorities of the Member States in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (38) ~~[In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation.]~~ **OR** ~~[In accordance with Articles 1,2 and 4a(1) of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol Ireland and the United Kingdom and Ireland are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]~~
- (39) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(39a) The European Data Protection Supervisor has been consulted and issued an opinion on 5 March 2014.

(39b) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

HAVE ADOPTED THIS REGULATION:

Chapter IV

²²²³ Processing of Information

Article x

Definitions

For the purposes of this Regulation:

- a) ²⁴**‘personal data’ means any information relating to an identified or identifiable natural person hereinafter referred to as “data subject”; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, economic, cultural or social identity;**
- b) **‘operational personal data’ means all personal data processed by Eurojust to fulfil the tasks laid down in Article 2;**
- c) **‘administrative personal data’ means all personal data processed by Eurojust apart from those that are processed to fulfil the tasks laid down in Article 2;**

²² CION has a reservation on Chapter IV and maintains that Regulation 45/2001 should apply to all data processed at Eurojust. FI, AT and PT have scrutiny reservations on the Chapter.

²³ Slovakia has a reservation on all references to the EDPS throughout the Chapter as it would prefer the JSB model of supervision.

²⁴ Definitions will possibly be reviewed in the future, taking into account the ongoing negotiations on the "data protection package".

- d) **‘processing of personal data’ hereinafter referred to as ‘processing’ means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;**
- e) **‘transfer of personal data’ means the communication of personal data, actively made available, between a limited number of identified parties, with the knowledge or intention of the sender to give the recipient access to the personal data;**
- g) **National Supervisory Authority/Authorities means the national competent authority or authorities designated by the Member States to monitor independently oversee in accordance with its national law the processing of personal data in that specific Member State.**

Article 26a

General data protection principles

Personal data shall be:

- (a) **processed fairly²⁵ and lawfully;**

²⁵ Slovenia reservation

- (b) collected for specified, explicit and legitimate purposes and not further processed in a manner incompatible with those purposes. Further processing of personal data for historical, statistical or scientific purposes shall not be considered incompatible provided that Eurojust provides appropriate safeguards, in particular to ensure that data are not processed for any other purposes;
- (c) adequate, relevant, and not excessive in relation to the purposes for which they are processed;
- (d) accurate and kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay;
- (e) kept in a form which permits identification of data subjects ~~and~~ for no longer than necessary for the purposes for which the personal data are processed,;
- (f) processed in a manner that ensures appropriate security of personal data and confidentiality of data processing.

Article ~~31a~~-26b

Administrative personal data

- 1. Regulation (EC) No 45/2001 applies to all administrative personal data held by Eurojust.**
- 2. Eurojust shall determine the retention periods for administrative personal data in the data protection provisions of its rules of procedure.**

Article 27

Processing of operational personal data

1. Insofar as it is necessary to **perform its tasks**, ~~achieve its explicitly stated task~~, Eurojust may, within the framework of its competence and in order to carry out its operational functions, process by automated means or in structured manual files in accordance with this Regulation only the personal data listed in point 1 of Annex 2, on persons who, under the national law legislation of the Member States concerned are suspected **or accused** of having committed or having taken part in a criminal offence in respect of which Eurojust is competent or who have been convicted of such an offence.
2. Eurojust may process only the personal data listed in point 2 of Annex 2, on persons who, under the national law legislation of the Member States concerned, are regarded as witnesses or victims in a criminal investigation or prosecution regarding one or more of the types of crime and the offences referred to in Article 3, ~~or persons under the age of 18~~. The processing of such personal data may only take place if it is ~~strictly~~ necessary for the **fulfilment** of the ~~expressly stated~~ tasks of Eurojust, within the framework of its competence and in order to carry out its operational functions.
3. In exceptional cases, Eurojust may also, for a limited period of time which shall not exceed the time needed for the conclusion of the case related to which the data are processed, process personal data other than those referred to in paragraphs 1 and 2 relating to the circumstances of an offence where they are immediately relevant to and included in on-going investigations which Eurojust is coordinating or helping to coordinate and when their processing is ~~strictly~~ necessary for the purposes specified in paragraph 1. The Data Protection Officer referred to in Article 31 shall be informed immediately of recourse to this paragraph and of the specific circumstances which justify the necessity of the processing of such personal data. Where such other data refer to witnesses or victims within the meaning of paragraph 2, the decision to process them shall be taken jointly by ~~at least two~~ **the relevant** national members.

4. **Operational p**Personal data, processed by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and ~~the processing of genetic data~~ or **data** concerning health or sex life may be processed by Eurojust only when such data are strictly necessary for the national investigations concerned as well as for coordination within Eurojust and if they supplement other **operational** personal data **relating to the same person** already processed. The Data Protection Officer shall be informed immediately of recourse to this paragraph **and of the specific circumstances which justify the necessity of the processing of such personal data**. Such data may not be processed in the Index referred to in Article 24(4). Where such other data refer to witnesses or victims within the meaning of paragraph 3, the decision to process them shall be taken by the ~~College~~ **relevant national members**.
- 4a. **No decision which produces adverse legal effects concerning a data subject shall be based solely on automated processing of data referred to in paragraph 4.**
5. ~~Regulation (EC) No 45/2001 shall apply to the processing of personal data by Eurojust in the context of its activities. This Regulation particularises and complements Regulation (EC) No 45/2001 in as far as personal data processed by Eurojust for its operational tasks are concerned.~~

Article 28

Time limits for the storage of operational personal data

1. **Operational personal** data processed by Eurojust shall be stored by Eurojust for only as long as is necessary for the performance of its tasks. In particular, without prejudice to paragraph 3, the personal data referred to in Article 27 may not be stored beyond the first applicable among the following dates:
 - a) the date on which prosecution is barred under the statute of limitations of all the Member States concerned by the investigation and prosecutions;
 - b) the date on which **Eurojust is informed that** the person has been acquitted and the judicial decision became final. **When the judicial decision becomes final the Member State concerned shall inform Eurojust without delay;**
 - c) three years after the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecution became final;
 - d) the date on which Eurojust and the Member States concerned mutually established or agreed that it was no longer necessary for Eurojust to coordinate the investigation and prosecutions, unless there is an obligation to provide Eurojust with this information in accordance with Article 21(5) or (6);
 - e) three years after the date on which data were transmitted in accordance with Article 21(46), or (57).

2. Observance of the storage deadlines referred to in ~~points (a), (b), (c) and (d)~~ of paragraph 1 shall be reviewed constantly by appropriate automated processing **particularly from the moment in which the case is closed by Eurojust**. Nevertheless, a review of the need to store the data shall be carried out every three years after they were entered; **such a review shall then apply to the case as a whole**. If data concerning persons referred to in Article 27(4) are stored for a period exceeding five years, the European Data Protection Supervisor shall be informed accordingly.
3. When one of the storage deadlines referred to in ~~points (a), (b), (c) and (d)~~ of paragraph ~~1(a)~~ has expired, Eurojust shall review the need to store the data longer in order to enable it to perform its tasks and it may decide by way of derogation to store those data until the following review. The reasons for the continued storage must be justified and recorded. If no decision is taken on the continued storage of personal data at the time of the review, those data shall be deleted **immediately**. ~~automatically after three years. However, once prosecution is statute barred in all Member States concerned as referred to in point (a) of paragraph 1, data may only be stored if they are necessary in order for Eurojust to provide assistance in accordance with this Regulation.~~
4. Where, in accordance with paragraph 3, data have been stored beyond the dates referred to in paragraph 1, a review of the need to store those data shall take place every three years by **the** European Data Protection Supervisor.
5. ~~Where a file contains non-automated and unstructured data, e~~Once the deadline for storage of the last item of automated data from the file has elapsed, all documents in the file shall be ~~returned to the authority which supplied them and any copies shall be destroyed~~ **with the exception of any original documents which Eurojust has received from national authorities and which need to be returned to their originator**.

6. Where Eurojust has coordinated an investigation or prosecutions, the national members concerned shall inform **the other national members concerned whenever they receive information that the case has been dismissed or all judicial decisions related to the case have become final.** ~~Eurojust and the other Member States concerned of all judicial decisions relating to the case which have become final in order, inter alia, that point (b) of paragraph 1(a) may be applied.~~

Article 28a

Security of operational personal data

1. **Eurojust and, insofar as it is concerned by data transmitted from Eurojust, each Member State, shall, as regards the processing of operational personal data within the framework of this Regulation protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or any other unauthorised form of processing.**
2. **Eurojust and each Member State shall implement appropriate technical and organisational measures with regard to data security and in particular measures designed to:**
 - (a) **deny unauthorised persons access to data processing equipment used for processing personal data (equipment access control);**
 - (b) **prevent the unauthorised reading, copying, modification or removal of data media (data media control);**
 - (c) **prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control) ;**
 - (d) **prevent the use of automated data processing systems by unauthorised persons using data communication equipment (user control);**

- (e) ensure that persons authorised to use an automated data processing system only have access to the data covered by their access authorisation (data access control);
 - (f) ensure that it is possible to verify and establish to which bodies personal data are transmitted when data are communicated (communication control);
 - (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data processing systems and when and by whom the data were input (input control);
 - (h) prevent unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);
 - (i) ensure that installed systems may, in the event of interruption, be restored immediately (recovery);
 - (j) ensure that the functions of the system perform without fault, that the occurrence of faults in the functions is immediately reported (reliability) and that stored data cannot be corrupted by system malfunctions (integrity).
3. Eurojust and Member States shall define mechanisms to ensure that security needs are taken on board across information system boundaries.
4. In case of a security breach, involving personal data, Eurojust shall notify, without undue delay and, where feasible, not later than 24 hours after having become aware of it, the breach to the Data Protection Officer, to the European Data Protection Supervisor as well as to Member States affected.

Article 29

Logging and documentation of operational personal data

1. For the purposes of verification of the lawfulness of the data processing, self-monitoring and ensuring proper data integrity and security, Eurojust shall keep records of any collection, alteration, access, disclosure, combination or erasure of **operational** personal data ~~used for operational purposes~~. **It shall also keep records of transmission to third parties**. Such logs or documentation shall be deleted after 18 months, unless **they** are further required for on-going control.
2. Logs or documentation prepared under paragraph 1 shall be communicated on request to the European Data Protection Supervisor. The European Data Protection Supervisor shall use this information only for the purpose of data protection control, ensuring proper data processing, and data integrity and security.

Article 30

Authorised access to operational personal data

Only national members, their deputies and their Assistants, persons referred to in Article 20(2) in so far as they are connected to the Case Management System and authorised Eurojust staff may, for the purpose of achieving Eurojust's tasks and within the limits provided for in Articles 24, 25 and 26, have access to **operational** personal data processed by Eurojust ~~for its operational tasks~~.

Article 31

Data Protection Officer

1. The Executive Board shall appoint a Data Protection Officer ~~in accordance with Article 24 of Regulation (EC) No 45/2001~~, **who shall be a member of staff specifically appointed for this purpose. In the performance of his or her duties, he or she shall act independently and may not receive any instructions.**

- 1a. **The Data Protection Officer shall be selected on the basis of his/her personal and professional qualities and, in particular, the expert knowledge of data protection.**
- 1b. **The Data Protection Officer shall be appointed for a term of four years. He/she shall be eligible for reappointment up to a maximum total term of eight years. He/she may be dismissed from the post of Data Protection Officer by the Executive Board only with the consent of the European Data Protection Supervisor if he/she no longer fulfils the conditions required for the performance of his/her duties.**
2. ~~When complying with the obligations set out in Article 24 of Regulation (EC) No 45/2001, the Data Protection Officer shall:~~ **The Data Protection Officer shall in particular have the following tasks, regarding the processing of personal data, to:**
 - aa) **ensure Eurojust's compliance with the data protection provisions of this Regulation, Regulation 45/2001 and the relevant data protection provisions in the rules of procedure of Eurojust;**
 - a) **ensure that a record of the transfer and receipt of personal data is kept in accordance with the provisions to be laid down in the rules of procedure of Eurojust;**
 - b) **cooperate with Eurojust staff responsible for procedures, training and advice on data processing and with the European Data Protection Supervisor;**
 - bb) **ensure that data subjects are informed of their rights under this Regulation at their request;**
 - c) **prepare an annual report and communicate that report to the College and to the European Data Protection Supervisor..**
3. **In the performance of his or her tasks, the Data Protection Officer shall have access to all the data processed by Eurojust and to all Eurojust premises.**

4. Eurojust's staff members assisting the Data Protection Officer in the performance of his or her duties shall have access to the personal data processed at Eurojust and to Eurojust premises to the extent necessary for the performance of their tasks.
5. If the Data Protection Officer considers that the provisions of Regulation (EC) No 45/2001 **related to the processing of administrative personal data or the provisions of this Regulation** related to the processing of **operational** personal data have not been complied with, he or she shall inform the Administrative Director requiring him or her to resolve the non-compliance within a specified time. If the Administrative Director does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall **refer the matter to the College** ~~inform the College~~ and shall agree with the College a specified time for a response. **If the College does not resolve the non-compliance of the processing within the specified time, the Data Protection Officer shall refer the matter to the European Data Protection Supervisor.**
- ~~6. The Executive Board shall adopt the implementing rules referred to in Article 24(8) of Regulation (EC) No 45/2001.~~

Article 32

Modalities regarding the exercise of the right of access to operational personal data

- 1.bis Any data subject shall be entitled to have access to operational personal data concerning him or her processed by Eurojust under the conditions laid down in this Article.**
1. Any data subject wishing to exercise the right of access to **operational** personal data **relating to him or her which are processed by Eurojust** may make a request to that effect free of charge to the **national supervisory** authority ~~appointed for this purpose~~ in the Member State of their choice. That authority shall refer the request to Eurojust without delay and in any case within one month of receipt.
2. The request shall be answered by Eurojust without undue delay and in any case within three months of its receipt by Eurojust.

2a Access to operational personal data based on any requests made under paragraph 1 may be refused or restricted, if such a refusal or restriction constitutes a necessary measure to:

- (a) enable Eurojust to fulfil its tasks properly;**
- (b) guarantee that any national investigation or prosecution will not be jeopardised;**
- (c) protect the rights and freedoms of others.**

When the applicability of an exemption is assessed, the interests of the data subject concerned shall be taken into account.

3. The competent authorities of the Member States concerned shall be consulted by Eurojust on a decision to be taken. A decision on access to data shall be conditional upon close cooperation between Eurojust and the Member States directly concerned by the communication of such data. In any case in which a Member State objects to Eurojust's proposed response, it shall notify Eurojust of the reasons for its objection. **Eurojust shall comply with any such objection. The competent authorities shall subsequently be notified of the content of Eurojust's decision through the national members concerned.**

~~4. When the right of access is restricted in accordance with Article 20(1) of Regulation (EC) No 45/2001, Eurojust shall inform the data subject in accordance with Article 20(3) of that Regulation in writing. The information about the principal reasons may be omitted where the provision of such information would deprive the restriction of its effect. The data subject shall at least be informed that all necessary verifications by the European Data Protection Supervisor have taken place.~~

~~5. Eurojust shall document the grounds for omitting the communication of the principal reasons on which the restriction referred to in paragraph 4 is based.~~

6. The national members concerned by the request shall deal with it and reach a decision on Eurojust's behalf. ~~The request shall be dealt with in full within three months of receipt.~~ Where the members are not in agreement, they shall refer the matter to the College, which shall take its decision on the request by a two-thirds majority.
- 6a Eurojust shall inform the data subject in writing on any refusal or restriction of access, on the reasons for such a decision and of his right to lodge a complaint to the European Data Protection Supervisor. If access is denied or if no personal data concerning the applicant are processed by Eurojust, the latter shall notify the applicant that it has carried out the checks, without giving any information which could reveal whether or not the applicant is known.**
- ~~7. When in application of Article 46 and 47 of Regulation (EC) No 45/2001, the European Data Protection Supervisor checks the lawfulness of the processing performed by Eurojust, he or she shall inform the data subject at least that all necessary verifications by the European Data Protection Supervisor have taken place.~~

Article 33

Rectification, erasure and blocking of operational personal data

- 1a Any data subject shall have the right to ask Eurojust to rectify operational personal data relating to him or her, if they are incorrect or incomplete or if their input or storage contravenes this Regulation and, where this is possible and necessary, to complete or update them.**
- 1b Any data subject shall have the right to ask Eurojust to erase operational personal data relating to him/her held by Eurojust if they are no longer required for the purposes for which they are lawfully collected or are lawfully further processed.**

1c Operational personal data shall be blocked rather than erased if there are reasonable grounds to believe that erasure could affect the legitimate interests of the data subject. Blocked data shall be processed only for the purpose that prevented their erasure.

1. If the personal data that have to be rectified, erased or whose processing has to be restricted ~~in accordance with Articles 14, 15 or 16 of Regulation (EC) No 45/2001~~ have been provided to Eurojust by third countries, international organisations **or Union bodies** ~~private parties, private persons or are the results of Eurojust's own analyses,~~ Eurojust shall rectify, erase or ~~restrict~~ **block** the processing of such data.
2. If the personal data that have to be rectified, erased or whose processing has to be restricted ~~in accordance with Article 14, 15 and 16 of Regulation (EC) No 45/2001~~ have been provided directly to Eurojust by Member States, Eurojust shall rectify, erase or ~~restrict~~ **block** the processing of such data in collaboration with Member States.
3. If incorrect data were transmitted by another appropriate means or if the errors in the data supplied by Member States are due to faulty transfer or were transmitted in breach of this Regulation or if they result from their being input, taken over or stored in an incorrect manner or in breach of this Regulation by Eurojust, Eurojust shall rectify or erase the data in collaboration with the Member States concerned.
4. ~~In the cases referred to in Articles 14, 15 or 16 of Regulation (EC) No 45/2001, all addressees of such data shall be notified forthwith in accordance with Article 17 of Regulation (EC) No 45/2001. In accordance with rules applicable to them, the addressees shall then rectify, erase or restrict the processing of those data in their systems.]~~

[...]

5. Eurojust shall inform the data subject in writing without undue delay and in any case within three months of the receipt of the request that data concerning him or her have been rectified, erased or their processing ~~restricted~~**blocked**.
6. Eurojust shall inform the data subject in writing on any refusal of rectification, of erasure or of restrictions to the processing, and the possibility of lodging a complaint with the European Data Protection Supervisor and seeking a judicial remedy.
- 6a At the request of a Member State's competent authorities, national member or national correspondent, if any, and under their responsibility, Eurojust shall rectify or erase personal data being processed by Eurojust which were transmitted or entered by that Member State, its national member or its national correspondent.**
- 6b In the cases referred to in paragraphs 1 and 2 all the suppliers and addressees of such data shall be notified immediately. In accordance with the rules applicable to them, the addressees, shall then rectify, erase or block the processing of those data in their own systems.**

Article 34

Responsibility in data protection matters

1. Eurojust shall process **operational** personal data in such a way that it can be established which authority provided the data or where the ~~personal~~ data has been retrieved from.
2. The responsibility for the quality of **operational** personal data shall lie with the Member State which provided the ~~personal~~ data to Eurojust and with Eurojust for **operational** personal data provided by EU bodies, third countries or international organisations, as well for **operational** personal data retrieved by Eurojust from publicly available sources.
3. The responsibility for compliance with Regulation (EC) No 45/2001 and this Regulation shall lie with Eurojust. The responsibility for the legality of transfer of **operational** personal data provided by the Member States to Eurojust shall lie with the Member State which provides the ~~personal~~ data, and with Eurojust for the **operational** personal data provided to Member States, EU bodies and third countries or organisations by Eurojust.

4. Subject to other provisions in this Regulation, Eurojust shall be responsible for all data processed by it.

*Article 34a*²⁶

Supervision by the national supervisory authority

1. ~~The national supervisory authorities shall have the task of monitoring independently, in accordance with national law, the permissibility of the transfer, the retrieval and any communication to Eurojust of operational personal data by the Member State concerned and to examine whether such transfer, retrieval or communication violates the rights of the data subject.~~
2. National supervisory authorities shall keep the European Data Protection Supervisor informed of any actions they take with respect to Eurojust.
3. ~~Any person shall have the right to request the national supervisory authority to verify that the transfer or communication to Eurojust of operational personal data concerning him/her in any form and the access to the operational personal data by the Member State concerned are lawful. This right shall be exercised in accordance with the national law of the Member State in which the request is made.~~

²⁶ Scrutiny reservations on Articles 34a, 34b and 35 -BE, BG, CZ, ES, FR, LT, PT, SI, SK

Article 34b

Supervision by the European Data Protection Supervisor

- 1. The European Data Protection Supervisor shall be responsible for monitoring and ensuring the application of the provisions of this Regulation relating to the protection of fundamental rights and freedoms of natural persons with regard to processing of operational personal data by Eurojust, and for advising Eurojust and data subjects on all matters concerning the processing of operational personal data. To this end, he/she shall fulfil the duties set out in paragraph 2, shall exercise the powers granted in paragraph 3 and shall cooperate with the national supervisory authorities in accordance with Article 35.**

- 2. The European Data Protection Supervisor shall have the following duties under this Regulation:**
 - (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;**

 - (b) conduct inquiries either on his/her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;**

 - (c) monitor and ensure the application of the provisions of this Regulation ~~and any other Union act~~ relating to the protection of natural persons with regard to the processing of personal data by Eurojust;**

 - (d) advise Eurojust, either on his/her own initiative or in response to a consultation, on all matters concerning the processing of personal data, in particular before it draws up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of operational personal data;**

3. The European Data Protection Supervisor may under this Regulation, and taking into account the implications for investigations and prosecutions in the Member States:
- (a) give advice to data subjects in the exercise of their rights;
 - (b) refer the matter to Eurojust in the event of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;
 - (c) order that requests to exercise certain rights in relation to data be complied with where such requests have been refused in breach of Articles 39 and 40;
 - (d) warn ~~or admonish~~ Eurojust;
 - (e) order Eurojust to carry out the rectification, blocking, erasure or destruction of data which have been processed in breach of the provisions governing the processing of operational personal data and the notification of such actions to third parties to whom such data have been disclosed;
 - ~~(f) impose a temporary or definitive ban on specific processing operations by Eurojust in breach of the provisions governing the processing of personal data;~~
 - (g) refer the matter to Eurojust and, if necessary, to the European Parliament, the Council and the Commission;
 - (h) refer the matter to the Court of Justice of the European Union under the conditions provided for in the Treaty;
 - (i) intervene in actions brought before the Court of Justice of the European Union.

- 4. The European Data Protection Supervisor shall have the power:**
- (a) to obtain from Eurojust access to all operational personal data and to all information necessary for his/her enquiries;**
 - (b) to obtain access to any premises in which Eurojust carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there.**
- 5. The European Data Protection Supervisor shall draw up an annual report on the supervisory activities on Eurojust. The national supervisory authorities shall be invited to make observations on this report, before it becomes part of the annual report of the European Data Protection Supervisor referred to in Article 48 of Regulation (EC) No 45/2001. The European Data Protection Supervisor shall take utmost account of the observations made by national supervisory authorities and, in any case, shall refer to them in the annual report.**

Article 35²⁷

Cooperation between the European Data Protection Supervisor and national data protection authorities

1. The European Data Protection Supervisor shall act in close cooperation with national **supervisory** authorities competent for data protection supervision with respect to specific issues requiring national involvement, in particular if the European Data Protection Supervisor or a national **supervisory** authority competent for data protection supervision finds major discrepancies between practices of the Member States or potentially unlawful transfers using Eurojust's communication channels, or in the context of questions raised by one or more national supervisory authorities on the implementation and interpretation of this Regulation.
2. **The European Data Protection Supervisor shall use the expertise and experience of national supervisory authorities in carrying out his/her duties set out in Article 34a(2). In carrying out joint inspections together with the European Data Protection Supervisor, members and staff of national supervisory authorities shall, taken due account of the principle of subsidiarity and proportionality, have equivalent powers as those laid down in Article 34b(4) and be bound by an equivalent obligation as that laid down in Article 59.** ~~In cases referred to under paragraph 1~~ †The European Data

²⁷ CION reservation on Article 35 The COM takes the view that a close cooperation between MS and EDPS is useful and should be provided for in the Eurojust Regulation. In this respect a 'Coordination Board' might serve as an appropriate platform for expert discussions and information exchange. It might also be a source of advice for the EDPS. Such a function might potentially conflict or overlap with the function of the future European Data Protection Board provided for in the data protection reform proposals, which also comprises national DPAs and the EDPS, and would unnecessarily create new fragmentations and confusion about responsibilities of both bodies then. Moreover the various and cumulative obligations for the EDPS potentially risk to interfere with his competences and potentially risk to undermine his independence.

Protection Supervisor and the national authorities competent for data protection supervision may, each acting within the scope of their respective competences, exchange relevant information, **and** assist each other in carrying out audits and inspections, ~~examine difficulties of interpretation or application of this Regulation, study problems related to the exercise of independent supervision or to the exercise of the rights of data subjects, draw up harmonised proposals for joint solutions to any problems and promote awareness of data protection rights, as necessary.~~

- 2a. The European Data Protection Supervisor shall keep national supervisory authorities fully informed of all issues directly affecting or otherwise relevant to them. Upon request of one or more national supervisory authorities, the European Data Protection Supervisor shall inform them on specific issues.**
- 2b. In cases relating to data originating from one or several Member States, including in cases referred to in Article 36(2), the European Data Protection Supervisor shall consult the national supervisory authorities concerned. The European Data Protection Supervisor shall not decide on further action to be taken before those national supervisory authorities have informed the European Data Protection Supervisor of their position, within a deadline specified by him/her which shall not be shorter than one month and not longer than three months. The European Data Protection Supervisor shall take utmost account of the position of the national supervisory authorities concerned. In cases where the European Data Protection Supervisor intends not to follow their position, he/she shall inform them, ~~and~~ provide a justification and submit the matter to the Cooperation Board referred to in paragraph 3.**

In cases which the European Data Protection Supervisor deems to be extremely urgent, he/she may decide to take immediate action. In such cases, the European Data Protection Supervisor shall immediately inform the national supervisory authorities concerned and justify the urgent nature of the situation as well as the action he/she has taken.

3. The National Supervisory Authorities and the European Data Protection Supervisor shall meet for the purposes outlined in this Article, as needed **and at least twice a year in a Cooperation Board which is hereby established**. The costs and servicing of these meetings shall be for the account of the European Data Protection Supervisor. Rules of procedure **of the Cooperation Board** shall be adopted at the first meeting **by simple majority**. Further working methods shall be developed jointly as necessary.
4. **The Cooperation Board shall be composed of a representative of a national supervisory authority of each Member State and of the European Data Protection Supervisor.**
5. **The Cooperation Board shall act independently when performing its tasks pursuant to paragraph 6 and shall neither seek nor take instructions from anybody.**
- 5a **The Cooperation Board shall examine cases submitted to it by the European Data Protection Supervisor in accordance with paragraph 2b and may request the European Data Protection Supervisor to reassess his position if appropriate. The Cooperation Board shall adopt such decisions on the basis of a two-thirds majority of its members.**
6. **The Cooperation Board shall have the following tasks:**
 - (a) **discuss general policy and strategy on data protection supervision of Eurojust and the permissibility of the transfer, the retrieval and any communication to Eurojust of personal data by the Member States;**

- (b) examine difficulties of interpretation or application of this Regulation;
- (c) study general problems relating to the exercise of independent supervision or the exercise of the rights of data subjects;
- (d) discuss and draw up harmonised proposals for joint solutions on matters referred to in paragraph 1;
- ~~(e) discuss cases submitted by the European Data Protection Supervisor in accordance with paragraph 2b;~~
- (ef) discuss cases submitted by any national supervisory authority; and
- (fg) promote awareness of data protection rights.

7. The European Data Protection Supervisor and the national supervisory authorities shall, each acting within the scope of their respective competences, take utmost account of the opinions, guidelines, recommendations and best practices agreed by the Cooperation Board.

Article 36

Right to lodge a complaint with the European Data Protection Supervisor **with respect to operational personal data**

- 1.bis Any data subject shall have the right to lodge a complaint with the European Data Protection Supervisor, if he/she considers that the processing by Eurojust of operational personal data relating to him/her does not comply with the provisions of this Regulation.**
1. Where a complaint introduced by a data subject relates to a decision as referred to in Article 32 or 33, the European Data Protection Supervisor shall consult the national supervisory **authorities** ~~bodies~~ or the competent judicial body in the Member State which was the source of the data or the Member State directly concerned. The decision of the European Data Protection Supervisor which may extend to a refusal to communicate any information, shall take account of the opinion of the national supervisory **authority** ~~body~~ or competent judicial body.
 2. Where a complaint relates to the processing of data provided by a Member State to Eurojust, the European Data Protection Supervisor shall ensure that the necessary checks have been carried out correctly in close cooperation with the national supervisory **authority** ~~body~~ of the Member State which has provided the data.
 3. Where a complaint relates to the processing of data provided to Eurojust by Union bodies, third countries or organisations or private parties, the European Data Protection Supervisor shall ensure that the necessary checks have been carried out by Eurojust.

Article 36a²⁸

Right to judicial remedy against the European Data Protection Supervisor

Actions against the decisions of the European Data Protection Supervisor concerning operational personal data shall be brought before the Court of Justice of the European Union.

²⁸ Slovenian scrutiny reservation.

Article 37

Liability for unauthorised or incorrect processing of data

1. Eurojust shall be liable, in accordance with Article 340 of the Treaty, for any damage caused to an individual which results from unauthorised or incorrect processing of data carried out by it.
2. Complaints against Eurojust pursuant to the liability referred to in paragraph 1 shall be heard by the Court of Justice in accordance with Article 268 of the Treaty.
3. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual, which results from unauthorised or incorrect processing carried out by it of data which were communicated to Eurojust.

Article 59

Confidentiality

1. The national members, their deputies and their Assistants referred to in Article 7, Eurojust staff, national correspondents ~~and~~, **seconded national experts**, ~~and~~ the Data Protection Officer **and the staff of the European Data Protection Supervisor** shall be bound by an obligation of confidentiality with respect to any information which has come to their knowledge in the course of the performance of their tasks.
2. The obligation of confidentiality shall apply to all persons and to all bodies called upon to work with Eurojust.
3. The obligation of confidentiality shall also apply after leaving office or employment or after the termination of the activities of the persons referred to in paragraphs 1 **and 2**.

4. The obligation of confidentiality shall apply to all information received by Eurojust, unless that information has already **lawfully** been made public ~~or is accessible to the public~~.
5. ~~Members and the staff of the European Data Protection Supervisor shall be subject to the obligation of confidentiality with respect to any information which has come to their knowledge in the course of the performance of their tasks.~~

Article 59a

Conditions of confidentiality of national proceedings

1. **Without prejudice to Article 21(3), where information is received or exchanged via Eurojust, the ~~providing~~ authority of the Member State who provided the information may, pursuant to its national law, stipulate conditions on the use by the receiving authority of that information in national proceedings.**
2. **The ~~receiving~~ authority of the Member State who receives the information, ~~when provided for in its national law~~, shall be bound by those conditions.**

Article 62

Rules on the protection of sensitive non-classified and of classified information

1. **Eurojust shall establish internal rules on the protection of sensitive non-classified information, including the creation and processing of such information at ~~or by~~ Eurojust.**

2. Eurojust shall establish **internal** rules on the protection of the European Union classified information which shall be consistent with Council Decision 2013/488/EU in order to ensure an equivalent level of protection for such information. ~~apply the security principles contained in the Council's security rules for protecting European Union Classified Information (EUCI) as set out in the annex to Commission Decision 2001/844/EC, ECSC, Euratom~~²⁹;

Article 66

Transitional arrangements

7. The Regulation shall not affect labour contracts which have been concluded in accordance with Article 31 prior to the entry into force of this Regulation. **The Data Protection Officer who was lastly appointed under Article 17 of Decision 2002/187/JHA shall take the role of the Data Protection Officer under Article 31 until xxx years after the entry into force of this Regulation.**

²⁹ OJ L 317, 3.12.2001, p. 1.

ANNEX II

*Categories of **operational** personal data referred to in Article 27*

1.
 - a) surname, maiden name, given names and any alias or assumed names;
 - b) date and place of birth;
 - c) nationality;
 - d) sex;
 - e) place of residence, profession and whereabouts of the person concerned;
 - f) social security numbers **or other official adequate numbers used in the Member States to identify individuals**, driving licences, identification documents and passport data, customs and Tax Identification Numbers;
 - g) information concerning legal persons if it includes information relating to identified or identifiable individuals who are the subject of a judicial investigation or prosecution;
 - h) ~~bank accounts~~ details ~~and~~ of accounts held with banks or other financial institutions;
 - i) description and nature of the alleged offences, the date on which they were committed, the criminal category of the offences and the progress of the investigations;
 - j) the facts pointing to an international extension of the case;
 - k) details relating to alleged membership of a criminal organisation;
 - l) telephone numbers, e-mail addresses, traffic data and location data, as well as ~~the~~ **any** related data necessary to identify the subscriber or user;

- m) vehicle registration data;
 - n) DNA profiles established from the non-coding part of DNA, photographs and fingerprints.
- 2.
- a) surname, maiden name, given names and any alias or assumed names;
 - b) date and place of birth;
 - c) nationality;
 - d) sex;
 - e) place of residence, profession and whereabouts of the person concerned;
 - f) the description and nature of the offences involving them, the date on which they were committed, the criminal category of the offences and the progress of the investigations.
 - g) social security number-or other official adequate numbers used by the Member States to identify individuals, driving licences, identification documents and passport data, customs and Tax Identification Numbers;**
 - h) details of accounts held with banks and other financial institutions;**
 - i) telephone numbers, e-mail addresses, traffic data and location data, as well as any related data necessary to identify the subscriber or user;**
 - j) vehicle registration data.**