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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee/Council
No. prev. doc.:	6250/15 EUROJUST 45 EPPO 16 CATS 29 COPEN 52 CODEC 194 CSC 38 16139/14 EUROJUST 212 EPPO 73 CATS 196 COPEN 306 CODEC 2374
No. Cion doc.:	12566/13 EUROJUST 59 EPPO 4 CATS 36 COPEN 109 CODEC 2163
Subject:	Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) [First reading] - General approach

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**I. INTRODUCTION**

1. On 17 July 2013 the Commission presented a proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation.
2. The United Kingdom and Ireland have not notified their wish to take part in the adoption and application of the proposed Regulation as provided under Article 3 of the Protocol 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.

3. In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark does not take part in the adoption of the proposed Regulation and will not be bound by it or subject to its application.
4. The aim of the Commission's proposal is to increase Eurojust's efficiency by establishing a new governance model. It also aims to improve its operational effectiveness through homogeneously defining the powers and status of National Members.
5. The proposed Regulation is subject to the ordinary legislative procedure. The European Parliament has yet to adopt its position on the proposal.
6. The European Data Protection Supervisor delivered his opinion on the Commission proposal on 5 March 2014.

## **II. STATE OF PLAY**

7. The Working Party on Cooperation in Criminal Matters (COPEN) started examining the text at its meeting on 19 September 2013 under the Lithuanian Presidency with a general exchange of views on each Chapter. The various Chapters of the draft Regulation were then examined by COPEN for the first time on an article by article basis under the Lithuanian and Hellenic Presidencies.
8. During the Hellenic Presidency, Ministers endorsed an alternative governance model which is designed to allow the College to focus primarily on operational matters by designating the preparation of all non-operational matters to a new Executive Board.

9. The Italian Presidency continued to advance the negotiations and prepared several compromise proposals based on the written contributions made by delegations, the outcome of COPEN meetings and consultation with various stakeholders including Eurojust. This effort culminated in the agreement of a partial general approach on Chapters I-III and V-IX with the exception of the provisions relating to the European Public Prosecutor's Office (EPPO), Data Protection and those dealing with confidentiality and security rules on classified and non-classified sensitive information to at the Council on 4 December 2014.
10. The decision not to include the provisions relating to the EPPO was taken by CATS as the proposal on the Regulation for the establishment of the EPPO has not been sufficiently advanced to determine the exact nature of the future relationship with Eurojust.
11. The Latvian Presidency has held 3 COPEN meetings since January which have focused on Chapter IV on Data Protection and the provisions dealing with confidentiality and security rules on classified and non-classified sensitive information (Articles 59 and 62 respectively). The Presidency has also tabled and discussed a revised text of the Recitals which takes account of other changes to the text. As a result of its effort, the Presidency is now in a position to present the full text of the proposal with the exception of the EPPO related provisions as a general approach.
12. This general approach will form the basis for discussions with the European Parliament. It is envisaged that a further mandate for discussions relating to the EPPO related provisions shall be sought from Coreper at a later stage in the discussions with Parliament when the draft EPPO Regulation is sufficiently advanced.
13. The changes in the text of the draft Regulation compared to the Commission's proposal are marked in ***bold italics*** and ~~striketrough~~. Removed text and provisions are marked (...) Text relating to EPPO is marked in [...], waiting for the further mandate for discussions with a corresponding footnote.
14. The Commission maintains its reservations on the following provisions; Articles 3(1)(a), 3(4), 5, 7(7), 10(1), 11a, 11(5), 17, 18(2), 18(4)(b), 21(5), 34(b)(3), 35, 52(3), 58(2) and 67 and Recitals (6) and (15).

### III. CONCLUSION

15. The Presidency invites Coreper to submit the text to the Council on 13 March 2015 with a view to reaching a general approach.

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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/JHA<sup>1</sup> 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/JHA<sup>2</sup> and Council Decision 2009/426/JHA<sup>3</sup> on the strengthening of Eurojust amended Eurojust's legal framework.

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<sup>1</sup> OJ L 63, 6.3.2002, p. 1.

<sup>2</sup> OJ L 245, 29.9.2003, p. 44.

<sup>3</sup> 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) **<sup>4</sup>This 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.]<sup>5</sup>

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<sup>4</sup> CION reservation linked to its position on Article 67.

<sup>5</sup> Recitals 4 and 5 relate to EPPO and are 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~~ **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) 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.**

- (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]<sup>6</sup> 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 Regulation.**
- (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.**
- (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 may, in accordance with their national law, retain the powers which are derived from their capacity as national authorities.**

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<sup>6</sup> Reference to the EPPO is in square brackets as it is outside the scope of the General Approach.



- (11a) **In principle, the competent national authority should order investigative measures and controlled deliveries, issue and execute mutual assistance and recognition requests and participate in joint investigation teams. However, the national members may also exercise these powers in agreement with the competent national authority or in case of urgency. Since these powers are exercised in accordance with national law, the courts of Member States should be competent to review these measures, in accordance with the requirements and procedures laid down by national law.**
- (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 ~~in the College when it exercises its management functions and~~ in the Executive Board, to ensure non-operational supervision and strategic guidance of Eurojust.

- (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 crimes<sup>7</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<sup>8</sup>, and by Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption<sup>9</sup> **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 data<sup>10</sup>, 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].**

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<sup>7</sup> OJ L 167, 26.6.2002, p.1.

<sup>8</sup> OJ L 332, 18.12.2007, p.103.

<sup>9</sup> OJ L 301, 12.11.2008, p.38.

<sup>10</sup> 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 45/2001<sup>11</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 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 data<sup>12</sup>.**
- (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.**

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<sup>11</sup> OJ L 8, 12.1.2001, p. 1.

<sup>12</sup> 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 should be responsible for the supervision of the processing of operational personal data, in particular 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) The duties and powers of the European Data Protection Supervisor such as the power to order Eurojust to carry out the rectification, blocking, erasure or destruction of operational personal data which have been processed in breach of the data protection provisions contained in this Regulation, should not extend to the personal data contained in the national case files.**
- (20f) 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 aiming at using their expertise and experience, while maximising available resources and pooling expertise both at national and at Union level.**
- (20g) 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.**
- (20h) 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.**
- (20i) 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]<sup>13</sup>, with the competent authorities of third countries as well as with international organisations, to the extent required for the accomplishment of its tasks.

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<sup>13</sup> The reference to the EPPO is in square brackets as it is outside the scope of the general approach.

- (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 Union<sup>14</sup>.
- (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.

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<sup>14</sup> OJ L 105, 27.04.1996, p.1.

- (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<sup>15</sup>.**
- (32aa) 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<sup>16</sup>**
- (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 1605/2002<sup>17</sup> should apply to Eurojust.
- (34) Regulation (EC) No. **883/2013** ~~4073/1999~~ of the European Parliament and of the Council of ~~25 May 1999~~ concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>18</sup> should apply to Eurojust.

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<sup>15</sup> SE and FI reservation.

<sup>16</sup> FR scrutiny reservation.

<sup>17</sup> OJ L 298, 26.10.2012, p.1.

<sup>18</sup> OJ L 248, 18.9.2013, p. 1



- (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.
- (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 I

## OBJECTIVE AND TASKS

### *Article 1*

#### **The European Union Agency for Criminal Justice Cooperation**

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

### *Article 1a*

#### **Definitions**<sup>19</sup>

**For the purpose of this Regulation:**

- a) **'international organisations' means international organisations and their subordinate bodies governed by public international law or other bodies which are set up by, or on the basis of, an agreement between two or more countries as well as Interpol.**

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<sup>19</sup> Definitions will possibly be reviewed in the future, taking into account the ongoing negotiations on the "data protection package".

- b) '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;**
- c) 'operational personal data' means all personal data processed by Eurojust to fulfil the tasks laid down in Article 2;**
- d) '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;**
- e) '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;**
- f) '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 and/or judicial authority or authorities designated by the Member States to supervise independently in accordance with national law the processing of personal data in that specific Member State.**

## *Article 2*

### **Tasks**

1. Eurojust shall support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States, or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.
2. In the implementation of its tasks Eurojust shall:
  - a) take into account any request emanating from a competent authority of a Member State or any information provided by **these authorities, by institutions and by any other** body competent by virtue of provisions adopted within the framework of the Treaties or collected by Eurojust itself;
  - b) facilitate the execution of requests for, and decisions on, judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition.
3. Eurojust shall exercise its tasks at the request of the competent authorities of the Member States or on its own initiative.

### Article 3

#### Competence of Eurojust

1. Eurojust's competence shall cover the forms of crime listed in Annex 1. [However, its competence shall not include the crimes for which the European Public Prosecutor's Office is competent.]<sup>20</sup>
- 1a **For forms of crime other than those listed in Annex 1, Eurojust may also, in accordance with its tasks, assist in the investigations and prosecutions at the request of a competent authority of a Member State.**
2. Eurojust's competence shall cover related criminal offences. The following offences shall be regarded as related criminal offences:
  - a) criminal offences committed in order to procure the means of perpetrating acts listed in Annex 1;
  - b) criminal offences committed in order to facilitate or carry out acts listed in Annex 1;
  - c) criminal offences committed to ensure the impunity of acts listed in Annex 1.
3. At the request of a Member State's competent authority, Eurojust may also assist investigations and prosecutions affecting only that Member State and a third country where a cooperation agreement or arrangement establishing cooperation pursuant to Article 43 has been concluded with that third country or where in a specific case there is an essential interest in providing such assistance.
4. At the request either of a Member State's competent authority or of the Commission, Eurojust may assist investigations and prosecutions affecting only that Member State ~~and the Union~~ **but which have repercussions at Union level. When acting at the request of the Commission the assistance by Eurojust shall be subject to the prior consent of the competent authority of the Member State concerned.**

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<sup>20</sup> The text in square brackets is a reference to EPPO competence which is outside the general approach.

*Article 4*  
**Operational functions of Eurojust**

1. Eurojust shall:
  - a) inform the competent authorities of the Member States of investigations and prosecutions of which it has been informed and which have repercussions at Union level or which might affect Member States other than those directly concerned;
  - b) assist the competent authorities of the Member States in ensuring the best possible coordination of investigations and prosecutions;
  - c) give assistance in order to improve cooperation between the competent authorities of the Member States, in particular on the basis of Europol's analyses;
  - d) cooperate and consult with the European Judicial Network in criminal matters, including making use of and contributing to the improvement of the documentary database of that European Judicial Network;
  - e) provide operational, technical and financial support to Member States' cross-border operations and investigations, **including joint investigation teams.**
  
2. In the exercise of its tasks, Eurojust may ask the competent authorities of the Member States concerned, giving its reasons, to:
  - a) undertake an investigation or prosecution of specific acts;
  - b) accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
  - c) coordinate between the competent authorities of the Member States concerned;

- d) set up a joint investigation team in accordance with the relevant cooperation instruments;
- e) provide it with any information that is necessary to carry out its tasks;
- f) take special investigative measures;
- g) take any other measure justified for the investigation or prosecution.

3. Eurojust may also:

- a) provide Europol with opinions based on analyses carried out by Europol;
- b) supply logistical support, including assistance for translation, interpretation and the organisation of coordination meetings.

4. Where two or more Member States cannot agree on which of them should undertake an investigation or prosecution following a request made under point **(a) and (b)** of paragraph 2, Eurojust shall issue a written opinion on the case. The **non-binding** opinion shall be promptly forwarded to the Member States concerned.

5. On request of a competent authority Eurojust shall issue a written opinion on ~~recurrent~~ **repeated** refusals or difficulties concerning the execution of requests for, and decisions on judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition, provided it could not be resolved through mutual agreement between the competent national authorities or through the involvement of the national members concerned. The **non-binding** opinion shall be promptly forwarded to the Member States concerned.



6. **The competent national authorities shall respond without undue delay to Eurojust's requests and opinions. Where the competent authorities of the Member States concerned decide not to comply with a request referred to in Article 4(2) or decide not to follow a written opinion referred to in Article 4(4) or (5), they shall inform Eurojust without undue delay of their decision and of the reasons for it. Where it is not possible to give the reasons for refusing to comply with a request because to do so would harm essential national security interests or would jeopardise the safety of individuals, the competent authorities of the Member States may cite operational reasons.**

#### *Article 5*

#### **Exercise of operational and other functions**

1. Eurojust shall act through one or more of the national members concerned when taking any of the actions referred to in Article 4(1) or (2). **Without prejudice to paragraph 2, the College shall focus on operational issues and any other issues that are directly linked to operational matters. It shall only be involved in administrative matters to the extent necessary to ensure that its operational tasks are fulfilled.**
2. Eurojust shall act as a College:
  - a) when taking any of the actions referred to in Article 4(1) or (2):
    - (i) when so requested by one or more of the national members concerned by a case dealt with by Eurojust;
    - (ii) when the case involves investigations or prosecutions which have repercussions at Union level or which might affect Member States other than those directly concerned;
  - b) when taking any of the actions referred to in Article 4 (3), (4) or (5);
  - c) when a general question relating to the achievement of its operational objectives is involved;

- d) ~~when otherwise provided for in this Regulation~~
- e) **when adopting the annual budget of Eurojust and exercise other functions in respect of Eurojust's budget pursuant to Chapter VI;**
- f) **when adopting the annual and multiannual programme and the annual report on Eurojust's activities;**
- g) **when electing or dismissing the President and Vice- Presidents in accordance with Article 11;**
- h) **when appointing the Administrative Director and where relevant extending his or her term of office or removing him or her from office in accordance with Article 17;**
- i) **when adopting working arrangements concluded in accordance with Articles 38(2a) and 43;**
- j) **when adopting rules for the prevention and management of conflicts of interest in respect of the national members;**
- k) **when preparing strategic reports, policy papers, guidelines for the benefit of national authorities and opinions pertaining to the operational work of Eurojust.**
- l) **when appointing liaison magistrates in accordance with Article 46;**
- m) **when taking any other decision which is not expressly attributed to the Executive Board in this Regulation or which is not under the responsibility of the Administrative Director in accordance with Article 18;**
- n) **when otherwise provided for in this Regulation.**
3. When it fulfils its tasks, Eurojust shall indicate whether it is acting through one or more of the national members or as a College.

4. **The College may assign additional administrative tasks to the Administrative Director and the Executive Board beyond those provided for in Articles 16 and 18 in line with its operational requirements.**
  
5. **The College shall adopt the Rules of Procedure of Eurojust on the basis of a two-thirds majority of its members. In the event that agreement cannot be reached by two-thirds majority, the decision shall be taken by simple majority. The Rules of Procedure shall be approved by the Council by means of implementing acts. ~~after consent of the European Parliament.~~**

# CHAPTER II

## STRUCTURE AND ORGANISATION OF EUROJUST

### *SECTION I*

#### *STRUCTURE*

##### *Article 6*

#### **Structure of Eurojust**

The structure of Eurojust shall comprise:

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

### *SECTION II*

#### *NATIONAL MEMBERS*

##### *Article 7*

#### **Status of national members**

1. Eurojust shall have one national member seconded by each Member State in accordance with its legal system, who shall have his or her regular place of work at the seat of Eurojust.
2. Each national member shall be assisted by one deputy and by an Assistant. The deputy and the Assistant **shall in principle** have their regular place of work at **the seat of** Eurojust. **The Member State may decide that the deputy and/or Assistant work in the Member State of origin and notify the College. If the operational needs of Eurojust so require, the College may request the Member State to justify its decision to base the deputy and Assistant in the Member State of origin. The Member State shall respond to the request of the College without undue delay.**

- 2a** More deputies or Assistants may assist the national member and may, if necessary and with the agreement of the College, have their regular place of work at Eurojust. **The Member State shall notify Eurojust and the Commission of the designation of national members, deputies and Assistants.**
3. The national members and deputies shall have a status as a prosecutor, judge or **police** officers of equivalent competence. **The competent national members shall at least have grant them** the powers referred to in this Regulation in order to be able to fulfil their tasks.
- 3a. The term of office of the national members and their deputies shall be four years, renewable .**
4. The deputy shall be able to act on behalf of or to substitute the national member. An Assistant may also act on behalf of or substitute the national member if he or she has a status as referred to in paragraph 3.
5. Operational information exchanged between Eurojust and Member States shall be directed through the national members.
- ~~6. National members shall contact the competent authorities of their Member State directly.~~
7. The salaries and emoluments of the national members, deputies and Assistants shall be borne by their Member State of origin **without prejudice to Article 11a.**
8. Where national members, deputies and Assistants act within the framework of Eurojust's tasks, the relevant expenditure related to these activities shall be regarded as operational expenditure.

*Article 8*

**Powers of national members**

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

d) **participate as necessary in joint investigation teams including in their setting up. However, if the joint investigation team is funded by the Union budget the national members concerned will always be invited to participate.**

3. In urgent cases ~~when agreement cannot be reached~~ **and in so far as it is not possible to identify or to contact the competent national authority in a timely manner**, the national members shall be competent to take the measures referred to in paragraph 2 **in accordance with national law** informing as soon as possible the national competent authority.

4. **Where granting the powers referred to in paragraphs 2 and 3 to the national member is contrary to a Member State's**

**(a) constitutional rules,**

**or**

**(b) fundamental aspects of the national criminal justice system:**

**(i) regarding the division of powers between the police, prosecutors and judges,**

**(ii) regarding the functional division of tasks between prosecution authorities,**

**or**

**(iii) related to the federal structure of the Member State concerned,**

**the national member shall be competent to submit a proposal to the competent national authority responsible to carry out the measures referred to in paragraphs 2 and 3.**

5. **Member States shall ensure that, in cases referred to in paragraph 4, the request issued by the national member be handled without undue delay by the competent national authority.**

*Article 9*

**Access to national registers**

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

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

***SECTION III***

***THE COLLEGE***

*Article 10*

**Composition of the College**

1. The College shall be composed of **all the national members**.
  - ~~a) all the national members when the College exercises its operational functions under Article 4;~~
  - ~~b) all the national members and two representatives of the Commission when the College exercises its management functions under Article 14;~~
- ~~2. The term of office of the members and their deputies shall be at least four years, renewable once. Upon expiry of their term of office or in the event of their resignation, members shall remain in office until their term is renewed or until they are replaced.~~



3. The Administrative Director shall attend the ~~management~~-meetings of the College **when administrative issues are discussed**, without the right to vote.
4. The College may invite any person whose opinion may be of interest to attend its meetings as an observer.
5. The members of the College may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.

*Article 11*

**The President and Vice-President of Eurojust**

1. The College shall elect a President and two Vice-Presidents from among the national members by a two thirds majority of its members. **In the event that a two thirds majority cannot be reached the election will take place in accordance with the Rules of Procedure of Eurojust.**
  - 1a. **The President shall exercise his/her functions on behalf of the College under its authority. The President shall;**
    - (i) **represent Eurojust**
    - (ii) **call and preside over the meetings of the College and the Executive Board and keep the College informed of any matters that are of interest to it.**
    - (iii) **direct the work of the College and monitor the daily management ensured by the Administrative Director**
    - (iv) **~~Further detail on the~~ undertake any other functions ~~of the President shall be set out in the Rules of Procedure of Eurojust.~~**

2. The Vice-Presidents shall **perform functions listed under paragraph 1a which the President entrusts to them. They shall** replace the President if he or she is prevented from attending to his or her duties. **The President and Vice-Presidents shall be assisted in their work the performance of their specific duties by the administrative staff.**
3. The term of office of the President and the Vice-Presidents shall be four years. They may be re-elected once.
- 3a. **When a national member is elected President or Vice-President of Eurojust, his or her term of office shall be extended to ensure that he or she can fulfil his or her function as President or Vice-President.**
4. **If the President or Vice-President no longer fulfil the conditions required for the performance of their duties, he or she may be dismissed by the College acting on a proposal from one third of its members. The decision shall be adopted on the basis of a two-thirds majority of its members, not including the President or Vice-President concerned.**
5. **When a national member is elected President or Vice-President of Eurojust. The Member State concerned may second another suitably qualified person to reinforce the national desk for the duration of the former's appointment as President or Vice-President. A Member State who decides to second such a person shall be entitled to apply for compensation in accordance with Article 11a.**

#### *Article 11a*

#### **Compensation mechanism for election to the positions of President and Vice-President**

1. **Within one year after entry into force of this Regulation, the Council acting on a proposal by the Commission, shall by means of implementing acts determine a compensation model for the purpose of Article 11(5), to be made available to Member States whose national member is elected President or Vice-President.**

2. The compensation shall be available to any Member State if;
    - (i) **their national member has been elected as President or Vice-President**
- and,
- (ii) **they request compensation from the College and provide justification for the need to reinforce the national desk on the grounds of increased work load.**
3. **The compensation provided shall equate to 70% of the national salary of the seconded person. Living costs and other associated expenses shall be provided on a comparative basis to those provided to EU officials or other public servants seconded abroad.**<sup>21</sup>
  4. **The compensation mechanism shall be at the charge of the Eurojust budget.**

#### *Article 12*

#### **Meetings of the College**

1. The President shall convene the meetings of the College.
2. The College shall hold at least one ~~operational~~ meeting per month. ~~To exercise its management functions, the College shall hold at least two ordinary meetings a year.~~ In addition, it shall meet on the initiative of the President, ~~at the request of the Commission~~ or at the request of at least one third of its members.
3. [The European Public Prosecutor shall receive the agendas of all College meetings and shall be entitled to participate in such meetings, without the right to vote, whenever issues are discussed which he or she considers to be of relevance for the functioning of the European Public Prosecutor's Office.]<sup>22</sup>

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<sup>21</sup> Reference to the specific rules governing this secondment of EU officials or other public servants to be added.

<sup>22</sup> Article 12(3) relates to the EPPO so does not form part of the General Approach.

*Article 13*

**Voting rules of the College**

1. Unless stated otherwise, the College shall take its decisions by a majority of its members.
2. Each member shall have one vote. In the absence of a voting member, the deputy **and Assistants** shall be entitled to exercise the right to vote **in accordance with Article 7(4)**.

*Article 14*

**~~Management functions of the College~~**

(...)

*Article 15*

**~~Annual and multi-annual programming~~**

(...)

*SECTION IV*  
*THE EXECUTIVE BOARD*

*Article 16*

**Functioning of the Executive Board**

1. The College shall be assisted by an Executive Board. The Executive Board shall **be responsible for taking key administrative decisions to ensure the functioning of Eurojust. It will also undertake the necessary preparatory work on other administrative matters for the College's approval in accordance with Article 5(2).** It shall not be involved in the operational functions of Eurojust referred to in Articles 4 and 5.
  - 1a. **The Executive Board may consult the College when preparing the annual budget for Eurojust, the annual report and the annual and multi-annual work programmes and may obtain other non-operational information from the College, if necessary for it to be able to perform its tasks.**
2. The Executive Board shall ~~also~~
  - a) The Executive Board shall also:
    - a) ~~prepare~~ approve Eurojust's annual and multi-annual work programme based on the draft prepared by the Administrative Director and forward to the College for adoption;~~the decisions to be adopted by the College in accordance with Article 14;~~
    - b) adopt an anti-fraud strategy ~~which is proportionate to the fraud risks having regard to cost-benefit of the measures to be implemented~~ **for Eurojust based on a draft prepared by the Administrative Director;**

- c) adopt appropriate implementing rules to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations;
- d) ensure adequate follow-up to the findings and recommendations stemming from the internal or external audit reports, evaluations and investigations **to the extent they are not linked with the operational work of the College** including those of the European Data Protection Supervisor (EDPS) and the European Anti-fraud Office (OLAF);
- e) take all decisions on the establishment and, where necessary, the modification of Eurojust's internal administrative structures;
- f) ~~without prejudice to the responsibilities of the Administrative Director, as set out in Article 18, assist and advise him or her in the implementation of the decisions of the College, with a view to reinforcing supervision of administrative and budgetary management;~~
- g) ~~take any other decision not expressly attributed to the College in Articles 5 or 14 or under the responsibility of the Administrative Director in accordance with Article 18;~~
- h) ~~adopt its rules of procedure.~~

- aa) undertake any additional administrative tasks assigned to it by the College under Article 5(4);
- bb) prepare the annual budget of Eurojust for adoption by the College and exercise other functions in respect of Eurojust's budget pursuant to Chapter VI;
- cc) approve the annual report on Eurojust's activities and forward to the College for adoption.
- dd) adopt the financial rules applicable to Eurojust in accordance with Article 52;
- ee) appoint an Accounting Officer and a Data Protection Officer who shall be functionally independent in the performance of their duties;
- ff) adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants delegating the relevant appointing authority powers to the Administrative Director and defining the conditions under which this delegation of powers can be suspended. The Administrative Director shall be authorised to sub-delegate these powers.

~~3. When necessary, because of urgency, the Executive Board may take certain provisional decisions on behalf of the College on administrative and budgetary matters, which shall be subject to confirmation by the College.~~

4. The Executive Board shall be composed of the President and Vice-Presidents of the College, one representative of the Commission and ~~one,~~ **two** other members of the College ~~who shall be appointed following a~~ **designated on** a two year rotation system in accordance with the Rules of Procedure of the College. The Administrative Director **shall attend the meetings of the Executive Board without the right to vote.**

4a. The President of the College shall be the Chairperson of the Executive Board. The Executive Board shall take its decisions by a majority of its members. Each member, ~~with the exception of the Administrative Director,~~ shall have one vote. **In the event of a tie vote, the President shall have the casting vote.**

5. ~~The term of office members of the Executive Board shall be four years, with the exception of the member of the College who shall be appointed following a two-year rotation system.~~ The term of office of members of the Executive Board shall end when their term as national members, **President or Vice-President** ends.
6. The Executive Board shall meet ~~hold~~ **at least** once a month ~~one ordinary meeting every three months~~. In addition, it shall meet on the initiative of its Chairperson or at the request of the Commission or of at least two of its other members.
- [7. The European Public Prosecutor shall receive the agendas of all Executive Board meetings and shall be free to participate in such meetings, without the right to vote, whenever issues are discussed which he or she considers to be of relevance for the functioning of the European Public Prosecutor's Office.
8. The European Public Prosecutor may address written opinions to the Executive Board, to which the Executive Board shall respond in writing without undue delay.]<sup>23</sup>

#### *Article 16a*<sup>24</sup>

#### **Annual and multi-annual programming**

1. By [30 November each year] the College shall adopt a programming document containing a multi-annual and annual work programme, based on a draft put forward by the Administrative Director and approved by the Executive Board. It shall forward it to the European Parliament, the Council and the Commission. The work programme shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.
2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme

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<sup>23</sup> Article 16(7) and (8) relate to the EPPO and do not form part of the General Approach.

<sup>24</sup> Formerly Article 15 of the Commission proposal.



shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate which tasks have been added, changed or deleted in comparison with the previous financial year.

3. The Executive Board shall amend the adopted annual work programme when a new task is given to Eurojust. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial annual work programme. The Executive Board may delegate to the Administrative Director the power to make non-substantial amendments to the annual work programme, while keeping the Executive Board informed of any such amendment.
4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff. The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 56.

## *SECTION V*

### *THE ADMINISTRATIVE DIRECTOR*

(...)

#### *Article 17*

#### **Status of the Administrative Director**

1. The Administrative Director shall be engaged as a temporary agent of Eurojust under Article 2(a) of the Conditions of Employment of Other Servants of the European Union.

2. The Administrative Director shall be appointed by the College from a list of candidates proposed by the ~~Commission~~ **Executive Board**, following an open and transparent selection procedure **in accordance with the Rules of Procedure of Eurojust**. For the purpose of concluding the contract of the Administrative Director, Eurojust shall be represented by the President of the College.
3. The term of office of the Administrative Director shall be ~~five~~ **four** years. By the end of this period, the ~~Commission~~ **Executive Board** shall undertake an assessment which takes into account an evaluation of the performance of the Administrative Director.
4. The College, acting on a proposal from the ~~Commission~~ **Executive Board** which takes into account the assessment referred to in paragraph 3, may extend once the term of office of the Administrative Director for no more than ~~five~~ **four** years.
5. An Administrative Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.
6. The Administrative Director shall be accountable to the College ~~and the Executive board~~.
7. The Administrative Director may be removed from the office only upon a decision of the College on **the basis of a two-thirds majority of its members**. ~~a proposal from the Commission.~~

#### *Article 18*

#### **Responsibilities of the Administrative Director**

1. For administrative purposes, Eurojust shall be managed by its Administrative Director.
2. Without prejudice to the powers of ~~the Commission~~, the College or the Executive Board, the Administrative Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or from any other body.

3. The Administrative Director shall be the legal representative of Eurojust.
4. The Administrative Director shall be responsible for the implementation of the administrative tasks assigned to Eurojust. In particular, the Administrative Director shall be responsible for:
  - a) the day-to-day administration of Eurojust **and staff management**;
  - b) implementing the decisions adopted by the College and the Executive Board;
  - c) preparing the ~~programming document~~ **annual and multi-annual work programme** and ~~reporting~~ **submitting** it to the Executive Board ~~and College for approval after consultation of the Commission.~~
  - d) implementing the ~~programming document~~ **annual and multi-annual work programme** and reporting to the Executive Board ~~and College~~ on its implementation;
  - e) preparing the annual report on Eurojust's activities and presenting it to the Executive Board for approval ~~completion and to the College for adoption~~;
  - f) preparing an action plan following-up on the conclusions of the internal or external audit reports, evaluations and investigations, including those of the European Data Protection Supervisor and OLAF and reporting on progress twice a year to the Executive Board, **the College**, the Commission and the European Data Protection Supervisor;
  - ~~g) protecting the financial interests of the Union by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by imposing effective, proportionate and dissuasive administrative and financial penalties;~~
  - g) preparing an anti-fraud strategy for Eurojust and presenting it to the Executive Board for approval;

- h) preparing the draft financial rules applicable to Eurojust;
  - i) preparing Eurojust's draft statement of estimates of revenue and expenditure and implementing its budget;
  - j) exercising, with respect to the staff of the Agency, the powers conferred by the Staff Regulations<sup>25</sup> on the Appointing Authority and by the Conditions of Employment of Other Servants<sup>26</sup> on the Authority Empowered to conclude Contracts of Employment ("the appointing authority powers");**
  - k) ~~supporting the~~ providing necessary administrative support to facilitate the operational work of Eurojust;**
  - l) providing support to the President and Vice-Presidents in the carrying out of their duties.**
- 5. The Council may invite the Administrative Director to report on the performance of his/her duties.**

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<sup>25</sup> Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations for Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.6.1962, p. 1385, as amended, in particular, by Council Regulation 259/68, of 29 February 1968 (OJ L 56, 4.3.1968, p. 1), as itself subsequently amended.

<sup>26</sup> Council Regulation No 31 (EEC), 11 (EAEC) of 18 December 1961 laying down the Staff Regulations for Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 045, 14.6.1962, p. 1385, as amended, in particular, by Council Regulation 259/68, of 29 February 1968 (OJ L 56, 4.3.1968, p. 1), as itself subsequently amended.

## CHAPTER III

### OPERATIONAL MATTERS

#### *Article 19*

#### **On-call coordination (OCC)**

1. In order to fulfil its tasks in urgent cases, Eurojust shall operate an On-Call Coordination able to receive and process at all times requests referred to it. The On-Call Coordination shall be **contactable**, ~~through a single On-Call Coordination contact point at Eurojust~~, on a 24 hour/7 day basis.
2. The On-Call Coordination shall rely on one representative (On-Call Coordination representative) per Member State who may be either the national member, his deputy, ~~or an~~ Assistant entitled to replace the national member **or other authority designated for this purpose under national law**. The On-Call Coordination representative shall be able to act on a 24 hour/7 day basis.
3. The On-Call Coordination representatives shall act without delay, in relation to the execution of the request in their Member State. **National members who are representatives shall act through the exercise of the powers available to them in accordance with Article 8.**

#### *Article 20*

#### **Eurojust National Coordination System**

1. Each Member State shall designate one or more national correspondents for Eurojust.
2. Each Member State shall set up a Eurojust national coordination system to ensure coordination of the work carried out by:
  - a) the national correspondents for Eurojust;
  - b) the national correspondent for Eurojust for terrorism matters;

- c) the national correspondent for the European Judicial Network in criminal matters and up to three other contact points of that European Judicial Network;
  - d) national members or contact points of the Network for Joint Investigation Teams and of the networks set up by Decision 2002/494/JHA, Decision 2007/845/JHA and by Decision 2008/852/JHA;
  - e) where applicable, any other relevant judicial authority.**
3. The persons referred to in paragraphs 1 and 2 shall maintain their position and status under national law.
4. The national correspondents for Eurojust shall be responsible for the functioning of the Eurojust national coordination system. When several correspondents for Eurojust are designated, one of them shall be responsible for the functioning of the Eurojust national coordination system.
- 4(a). The Eurojust national member shall be informed of all meetings of the ENCS where casework related matters are discussed and may attend as necessary.**
5. The Eurojust national coordination system shall facilitate, within the Member State, the carrying out of the tasks of Eurojust, in particular by:
- a) ensuring that the Case Management System referred to in Article 24 receives information related to the Member State concerned in an efficient and reliable manner;
  - b) assisting in determining whether a **case request** should be ~~dealt~~ **handled** with the assistance of Eurojust or of the European Judicial Network;
  - c) assisting the national member to identify relevant authorities for the execution of requests for, and decisions on, judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition;
  - d) maintaining close relations with the Europol National Unit, **other European Judicial Network contact points and other relevant competent national authorities.**

6. In order to meet the objectives referred to in paragraph 5, persons referred to in paragraph 1 and in points (a), (b) and (c) of paragraph 2 shall, and persons **or authorities** referred to in points (d) **and (e)** of paragraph 2 may be connected to the Case Management System in accordance with this Article and with Articles 24, 25, 26 and 30. The connection to the Case Management System shall be at the charge of the general budget of the European Union.
7. The setting up of the Eurojust national coordination system and the designation of national correspondents shall not prevent direct contacts between the national member and the competent authorities of his Member State.

### *Article 21*

#### **Exchanges of information with the Member States and between national members**

1. The competent authorities of the Member States shall exchange with Eurojust any information necessary for the performance of its tasks in accordance with Articles 2 and 4 as well as with the rules on data protection set out in this Regulation. This shall at least include the information referred to in paragraphs **4, 5 and 6** ~~and 7~~.
2. The transmission of information to Eurojust shall **only** be interpreted as a request for the assistance of Eurojust in the case concerned ~~only~~ if so specified by a competent authority.
3. The national members shall exchange any information necessary for the performance of the tasks of Eurojust, without prior authorisation, among themselves or with their Member State's competent authorities. In particular, the competent national authorities shall promptly inform their national members of a case which concerns them.
4. The national competent authorities shall inform their national members of the setting up of joint investigation teams and of the results of the work of such teams.

5. The national competent authorities shall inform their national members without undue delay of any case concerning ~~crimes under the competence of Eurojust~~ **listed in Annex 1** affecting at least three Member States **directly** for which requests for or decisions on judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition, have been transmitted to at least two Member States and,

**(a) the offence involved is punishable in the requesting or issuing Member State by a custodial sentence or a detention order for a maximum period of at least five or six years to be decided by the Member State concerned, and is included in the following list:**

- (i) trafficking in human beings;**
- (ii) sexual abuse and sexual exploitation including child pornography and solicitation of children for sexual purposes;**
- (iii) drug trafficking;**
- (iv) illicit trafficking in ~~firearms, their parts and components and~~ ammunition and explosives;**
- (v) corruption;**
- (vi) crime against the financial interests of the Union;**
- (vii) forgery of money and means of payment**
- (viii) money laundering activities;**
- (ix) computer crime**

**or**



**(b) there are factual indications that a criminal organisation is involved.**

**or**

**(c) there are indications that the case may have a serious cross-border dimension or repercussions at European Union level or that it might affect Member States other than those directly involved.**

6. The national competent authorities shall inform their national members of:
- a) cases where conflicts of jurisdiction have arisen or are likely to arise;
  - b) controlled deliveries affecting at least three countries, at least two of which are Member States;
  - c) repeated difficulties or refusals regarding the execution of requests for, and decisions on, judicial cooperation, including those based on instruments giving effect to the principle of mutual recognition.
7. National authorities shall not be obliged in a particular case to supply information if this would mean:
- a) harming essential national security interests; or
  - b) jeopardising the safety of individuals.
8. This Article shall be without prejudice to conditions set in bilateral or multilateral agreements or arrangements between Member States and third countries including any conditions set by third countries concerning the use of information once supplied.
- 8a. This Article shall be without prejudice to other obligations regarding the transmission of information to Eurojust, including Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences.<sup>27</sup>**

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<sup>27</sup> OJ L 167, 26.6.2002 p.1.

9. Information referred to in this Article shall be provided in a structured way as established by Eurojust. **The national authority shall not be obliged to provide this information when it has already been transmitted to Eurojust in accordance with other provisions of this Regulation.**

#### *Article 22*

##### **Information provided by Eurojust to competent national authorities**

1. Eurojust shall provide competent national authorities with information **and feedback** on the results of the processing of information, including the existence of links with cases already stored in the Case Management System. This information may include personal data.
2. Where a competent national authority requests Eurojust to provide it with information, Eurojust shall transmit it in the timeframe requested by that authority.

#### ~~Article 23~~

##### ~~Follow-up to requests and opinions of Eurojust~~

(...)

#### *Article 24*

##### **Case Management System, index and temporary work files**

1. Eurojust shall establish a Case Management System composed of temporary work files and of an index which contain personal data as referred to in Annex 2 and non-personal data.
2. The purpose of the Case Management System shall be to:
  - a) support the management and coordination of investigations and prosecutions for which Eurojust is providing assistance, in particular by the cross-referencing of information;

- b) facilitate access to information on on-going investigations and prosecutions;
  - c) facilitate the monitoring of lawfulness and compliance with the provisions of this Regulation concerning the processing of personal data.
3. The Case Management System may be linked to the secure telecommunications connection referred to in Article 9 of Decision 2008/976/JHA.
  4. The index shall contain references to temporary work files processed within the framework of Eurojust and may contain no personal data other than those referred to in points (1)(a) to (i), (k) and (m) and (2) of Annex 2.
  5. In the performance of their duties, the national members may process data on the individual cases on which they are working in a temporary work file. ~~They shall allow the Data Protection Officer to have access to the temporary work file.~~ The Data Protection Officer shall be informed by the national member concerned of the opening of each new temporary work file that contains personal data. **In the performance of their duties the national member shall allow the Data Protection Officer to have access to the temporary work file.**
  6. For the processing of operational personal data, Eurojust may not establish any automated data file other than the Case Management System ~~or a temporary work file.~~ **The national member may, however, temporarily store and analyse personal data for the purpose of determining whether such data are relevant to Eurojust's tasks and can be included in the Case Management System. This data may be held for up to 3 months.**

- [7. The Case Management System and its temporary work files shall be made available for use by the European Public Prosecutor's Office.
8. The provisions on access to the Case Management System and the temporary work files shall apply *mutatis mutandis* to the European Public Prosecutor's Office. However, the information entered into the Case Management System, temporary work files and the index by the European Public Prosecutor's Office shall not be available for access at the national level.]<sup>28</sup>

#### Article 25

#### Functioning of temporary work files and the index

1. A temporary work file shall be opened by the national member concerned for every case with respect to which information is transmitted to him or her in so far as this transmission is in accordance with this Regulation ~~or other applicable legal instruments~~. The national member shall be responsible for the management of the temporary work files opened by that national member.
2. The national member who has opened a temporary work file shall decide, on a case-by-case basis, whether to keep the temporary work file restricted or to give access to it or to parts of it, to other national members or to Eurojust staff **or any other person working on behalf of Eurojust authorised by who has received the necessary authorisation from the** Administrative Director.
3. The national member who has opened a temporary work file shall decide which information related to this temporary work file shall be introduced in the index.

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<sup>28</sup> Article 24 (7) and (8) relate to EPPO and are not included in the General Approach.

*Article 26*

**Access to the Case Management System at national level**

1. Persons referred to in Article 20(2), in so far as they are connected to the Case Management System, may only have access to:
  - a) the index, unless the national member who has decided to introduce the data in the index expressly denied such access;
  - b) temporary work files opened by the national member of their Member State;
  - c) temporary work files opened by national members of other Member States and to which the national member of their Member States has received access unless the national member who opened the temporary work file expressly denied such access.
2. The national member shall, within the limitations provided for in paragraph 1, decide on the extent of access to the temporary work files which is granted in his or her Member State to persons referred to in Article 20(2) in so far as they are connected to the Case Management System.
3. Each Member State shall decide, after consultation with its national member, on the extent of access to the index which is granted in that Member State to persons referred to in Article 20(2) in so far as they are connected to the Case Management System. Member States shall notify Eurojust and the Commission of their decision regarding the implementation of this paragraph. The Commission shall inform the other Member States thereof.
4. Persons which have been granted access in accordance with paragraph 2 shall at least have access to the index to the extent necessary to access the temporary work files to which they have been granted access.

## Chapter IV

### <sup>29</sup><sup>30</sup> Processing of Information

#### *Article x*

#### Definitions

#### *Article 26a*

#### General data protection principles

#### Personal data shall be:

- (a) processed fairly<sup>31</sup> and lawfully;
- (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;

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<sup>29</sup> 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.

<sup>30</sup> Slovakia has a reservation on all references to the EDPS throughout the Chapter as it would prefer the JSB model of supervision.

<sup>31</sup> Slovenia reservation

- (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 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 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 **fulfillment** 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 **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 at **reasonable intervals** 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 having accessed operational personal data concerning him or her processed by Eurojust in accordance with Article 32 of this Regulation, shall have the right to ask Eurojust to rectify that 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 having accessed operational personal data concerning him or her processed by Eurojust in accordance with Article 32 of this Regulation, 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*<sup>32</sup>

**Supervision by the national supervisory authority**

**National supervisory authorities shall keep the European Data Protection Supervisor informed of any actions they take with respect to the transfer, retrieval, or any other communication of operational personal data under this Regulation by the Member State to Eurojust.**

*Article 34b*<sup>33</sup>

**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;**

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<sup>32</sup> Scrutiny reservations on Articles 34a BE, BG, CZ, PT, SI, SK

<sup>33</sup> Scrutiny reservations on Articles 34b BE, BG, CZ, ES, FR,PT, SI, SK

- (c) **monitor and ensure the application of the provisions of this Regulation relating to the protection of natural persons with regard to the processing of operational 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 operational 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.<sup>34</sup> **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 operational 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 operational personal data be complied with where such requests have been refused in breach of Articles 39 and 40;**
- (d) **warn Eurojust;**
- (e) **order Eurojust to carry out the rectification, blocking, erasure or destruction of operational personal data which have been processed by Eurojust 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;**

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<sup>34</sup> CION and AT have scrutiny reservation on the deletion of the point '**impose a temporary or definitive ban on specific processing operations by Eurojust in breach of the provisions governing the processing of personal data**' formally included in the revised text.

- (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 35<sup>3536</sup>*

**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.

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<sup>35</sup> Scrutiny reservations on Articles 35 - BE, BG, CZ, ES, FR, PT, SI, SK

<sup>36</sup> 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.



2. **The European Data Protection Supervisor shall use the expertise and experience of national supervisory authorities in carrying out his/her duties. 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 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 any national supervisory authority; and**
- (f) **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 36a*

#### **Right to judicial review 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.**

### *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.

## CHAPTER V RELATIONS WITH PARTNERS

### SECTION I COMMON PROVISIONS

#### Article 38

#### Common provisions

1. In so far as necessary for the performance of its tasks, Eurojust may establish and maintain cooperative relations with Union bodies and agencies in accordance with the objectives of those bodies or agencies, the competent authorities of third countries **and** international organisations, ~~and the International Criminal Police Organisation (Interpol).~~
2. In so far as relevant to the performance of its tasks and subject to any restriction stipulated pursuant to Article 21(8) **and Article 62**, Eurojust may directly exchange all information, with the exception of personal data, with the entities referred to in paragraph 1.
  - 2a. **For the purposes set out in paragraphs 1 and 2, Eurojust may conclude working arrangements with entities referred to in paragraph 1. Those working arrangements shall not form the basis for allowing the exchange of personal data and shall not bind the Union or its Member States.**
3. Eurojust may, ~~in accordance with Article 4 of Regulation (EC) No 45/2001,~~ receive and process personal data received from the entities referred to in paragraph 1 in so far as necessary for the performance of its tasks and subject to the provisions of Section IV.

4. Personal data shall only be transferred by Eurojust to **Union bodies**, third countries **and** international organisations ~~and Interpol~~ if this is necessary for ~~preventing and combating crime that falls under Eurojust's competence and in accordance with this Regulation~~ **the performance of its tasks and in accordance with Articles 44 and 45**. If the data to be transferred have been provided by a Member State, Eurojust shall ~~seek~~ **obtain the consent of the relevant competent authority in that Member State**, unless:
- a) ~~the authorisation can be assumed as the Member State has not expressly limited the possibility of onward transfers; or~~
  - b) the Member State has granted its prior authorisation to such onward transfer, either in general terms or subject to specific conditions. Such consent may be withdrawn any moment.
5. Onward transfers to third parties of personal data received from Eurojust by Member States, Union bodies or agencies, third countries ~~or and~~ international organisations ~~or Interpol~~, shall be prohibited unless Eurojust has **obtained prior consent from the Member State who provided the data and** given its explicit consent after considering the circumstances of the case at hand and only for a specific purpose that is not incompatible with the purpose for which the data was transmitted.

**SECTION II**  
**RELATIONS WITH PARTNERS**

*Article 39*

**Cooperation with the European Judicial Network and other networks of the European Union  
involved in cooperation in criminal matters**

1. Eurojust and the European Judicial Network in criminal matters shall maintain privileged relations with each other, based on consultation and complementarity, especially between the national member, the European Judicial Network contact points of the same Member State and the national correspondents for Eurojust and the European Judicial Network. In order to ensure efficient cooperation, the following measures shall be taken:
  - a) national members shall, on a case-by-case basis, inform the European Judicial Network contact points of all cases which they consider the Network to be in a better position to deal with;
  - b) the Secretariat of the European Judicial Network shall form part of the staff of Eurojust. It shall function as a separate unit. It may draw on the administrative resources of Eurojust which are necessary for the performance of the European Judicial Network's tasks, including for covering the costs of the plenary meetings of the Network;
  - c) European Judicial Network contact points may be invited on a case-by-case basis to attend Eurojust meetings;
  - d) **Eurojust and the European Judicial Network may make use of the ENCS when determining whether a request should be handled with the assistance of Eurojust or the European Judicial Network in accordance with Article 20(5)(b).**

2. The Secretariat of the Network for Joint Investigation Teams and of the network set up by Decision 2002/494/JHA shall form part of the staff of Eurojust. These secretariats shall function as separate units. They may draw on the administrative resources of Eurojust which are necessary for the performance of their tasks. Coordination between the secretariats shall be ensured by Eurojust. This paragraph shall apply to the secretariat of any new network set up by a decision of the Council where that decision provides that the secretariat shall be provided by Eurojust.
3. The network set up by Decision 2008/852/JHA may request that Eurojust provide a secretariat to the network. If such request is made, paragraph 2 shall apply.

#### *Article 40*

#### **Relations with Europol**

1. Eurojust shall take all appropriate measures to enable Europol, within its mandate, to have **indirect** access on the basis of a hit/no hit system to information provided to Eurojust, without prejudice to any restrictions indicated by the providing Member States, Union bodies, third countries, **and** international organisations ~~or Interpol~~. In case of a hit, Eurojust shall initiate the procedure by which the information that generated the hit may be shared, in accordance with the decision of the Member State, Union body, third country, international organisation or Interpol that provided the information to Eurojust. **of the provider of the information to Eurojust.**
2. Searches of information in accordance with paragraph 1 shall be made only for the purpose of identifying whether information available at ~~Eurojust~~ **Europol** matches with information processed at ~~Europol~~. **Eurojust.**
3. Eurojust shall allow searches in accordance with paragraph 1 only after obtaining from Europol information about which staff members have been designated as authorised to perform such searches.



4. If during Eurojust's information processing activities in respect of an individual investigation, Eurojust or a Member State identifies the necessity for coordination, cooperation or support in accordance with the mandate of Europol, Eurojust shall notify them thereof and shall initiate the procedure for sharing the information, in accordance with the decision of the Member State providing the information. In such a case Eurojust shall consult with Europol.
5. Europol shall respect any restriction to access or use, in general or specific terms, indicated by Member States, Union bodies or agencies, third countries ~~or~~ international organisations. ~~or Interpol.~~

#### *Article 41*

#### **Relations with the European Public Prosecutor's Office**

- [1. Eurojust shall establish and maintain a special relationship with the European Public Prosecutor's Office based on close cooperation and the development of operational, administrative and management links between them as defined below. To this end, the European Public Prosecutor and the President of Eurojust shall meet on a regular basis to discuss issues of common concern.
2. Eurojust shall treat any request for support emanating from the European Public Prosecutor's Office without undue delay, and shall deal with such requests, where appropriate, as if they had been received from a national authority competent for judicial cooperation.
3. Whenever necessary, Eurojust shall make use of the Eurojust National Coordination Systems established in accordance with Article 20, as well as the relations it has established with third countries, including its liaison magistrates, in order to support the cooperation established in accordance with paragraph 1.
4. The cooperation established in accordance with paragraph 1 shall entail the exchange of information, including personal data. Any data thus exchanged shall only be used for the purposes for which it was provided. Any other usage of the data shall only be allowed in as far as such usage falls within the mandate of the body receiving the data, and subject to the prior authorisation of the body which provided the data.

5. For the purpose of identifying whether information available at Eurojust matches with information processed by the European Public Prosecutor's Office, Eurojust shall put in place a mechanism for automatic cross-checking of data entered into its Case Management System. Whenever a match is found between data entered into the Case Management System by the European Public Prosecutor's Office and data entered by Eurojust, the fact that there is a match will be communicated to both Eurojust and the European Public Prosecutor's Office, as well as the Member State which provided the data to Eurojust. In cases where the data was provided by a third party, Eurojust shall only inform that third party of the match found with the consent of the European Public Prosecutor's Office.
6. Eurojust shall designate and inform the European Public Prosecutor's Office which staff members shall be authorised to have access to the results of the cross-checking mechanism.
7. Eurojust shall support the functioning of the European Public Prosecutor's Office through services to be supplied by its staff. Such support shall in any case include:
  - a) technical support in the preparation of the annual budget, the programming document containing the annual and multiannual programming and the management plan;
  - b) technical support in staff recruitment and career-management;
  - c) security services;
  - d) Information Technology services;
  - e) financial management, accounting and audit services;
  - f) any other services of common interest.

The details of the services to be provided shall be laid down in an agreement between Eurojust and the European Public Prosecutor's Office.

8. The European Public Prosecutor may address written opinions to the College, to which the College shall respond in writing without undue delay. Such written opinions shall in any case be presented whenever the College adopts the annual budget and work programme.]<sup>37</sup>

#### *Article 42*

#### **Relations with other Union bodies and agencies**

1. Eurojust shall establish and maintain cooperative relations with the European Judicial Training Network.
2. OLAF ~~may~~**shall** contribute to Eurojust's coordination work regarding the protection of the financial interests of the Union, in accordance with its mandate under Regulation (EU, Euratom) of the European Parliament and of the Council No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999.

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<sup>37</sup> Article 41 relates to the EPPO so does not form part of the General Approach.

3. For purposes of the receipt and transmission of information between Eurojust and OLAF, and without prejudice to Article 8, Member States shall ensure that the national members of Eurojust shall be regarded as competent authorities of the Member States solely for the purposes of **Regulation (EU, Euratom) of the European Parliament and of the Council No 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 and Council Regulation (Euratom) No 1074/1999**<sup>38</sup>. The exchange of information between OLAF and national members shall be without prejudice to the information which must be given to other competent authorities under those Regulations.

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<sup>38</sup> OJ L 136, 31.5.1999, p. 8.

## ***SECTION III***

### ***INTERNATIONAL COOPERATION***

#### *Article 43*

#### **Relations with Union bodies, the authorities of third countries and international organisations**

1. ~~Eurojust may establish~~ **The working arrangements referred to in Article 38(2a) with the entities referred to in Article 38(1) may include the secondment of liaison magistrates to Eurojust.**
2. Eurojust may designate, in agreement with the competent authorities **concerned**, contact points in third countries in order to facilitate cooperation **in line with Eurojust's operational needs.**

#### *Article 46 43a*

#### **Liaison magistrates posted to third countries**

1. For the purpose of facilitating judicial cooperation with third countries in cases in which Eurojust is providing assistance in accordance with this Regulation, the College may post liaison magistrates to a third country subject to a working arrangement as referred to in ~~Article 43~~ **38(2a)** with that third country.
- 1(a) **The tasks of the liaison magistrates shall include any activity designed to encourage and accelerate all forms of judicial cooperation in criminal matters, in particular by establishing direct links with the competent authorities of the host State. The liaison magistrate may exchange operational personal data with the competent authorities of the State concerned in the performance of their tasks in accordance with Article 45.**

2. The liaison magistrate referred to in paragraph 1 is required to have experience of working with Eurojust and adequate knowledge of judicial cooperation and how Eurojust operates. The posting of a liaison magistrate on behalf of Eurojust shall be subject to the prior consent of the magistrate and of his or her Member State.
3. Where the liaison magistrate posted by Eurojust is selected among national members, deputies or assistants:
  - a) he or she shall be replaced in his or her function as a national member, deputy or Assistant, by the Member State;
  - b) he or she ceases to be entitled to exercise the powers granted to him or her in accordance with Article 8.
4. Without prejudice to Article 110 of the Staff Regulations, the College shall draw up ~~rules~~ **the terms and conditions of** ~~on~~ the posting of liaison magistrates, **including the level of remuneration** and adopt the necessary implementing arrangements in this respect in consultation with the Commission.
5. The activities of liaison magistrates posted by Eurojust shall be ~~the~~ subject ~~of~~ **to the** supervision ~~by~~ **of** the European Data Protection Supervisor. The liaison magistrates shall report to the College, which shall inform the European Parliament and the Council in the annual report and in an appropriate manner of their activities. The liaison magistrates shall inform national members and national competent authorities of all cases concerning their Member State.

6. Competent authorities of the Member States and liaison magistrates referred to in paragraph 1 may contact each other directly. In such cases, the liaison magistrate shall inform the national member concerned of such contacts.
7. The liaison magistrates referred to in paragraph 1 shall be connected to the Case Management System.

Article ~~47~~ **43b**

**Requests for judicial cooperation to and from third Countries**

1. Eurojust ~~shall~~ **may, with the agreement of the Member States concerned**, coordinate the execution of requests for judicial cooperation issued by a third country where these requests ~~are part of the same investigation and~~ require execution in at least two Member States **as part of the same investigation**. Such requests may also be transmitted to Eurojust by a competent national authority.
2. In case of urgency and in accordance with Article 19, the On-Call Coordination (OCC) may receive and ~~process~~ **transmit** requests referred to in paragraph 1 of this Article and issued by a third country which has concluded a **cooperation agreement or** working arrangement with Eurojust
3. Without prejudice to Article 3(~~43~~), where requests for judicial cooperation, which relate to the same investigation and require execution in a third country, are made **by a Member State concerned**, Eurojust shall facilitate judicial cooperation with that third country.

## SECTION IV

### TRANSFERS OF PERSONAL DATA

#### *Article 44*

#### **Transfer of operational personal data to Union bodies or agencies**

Subject to any possible restrictions pursuant to Article 21(8) **and Article 62 and subject to Article 38(4)**, Eurojust may directly transfer personal data to Union bodies or agencies in so far as it is necessary for the performance of its tasks or those of the recipient Union body or agency.

#### *Article 45*

#### **Transfer of operational personal data to third countries and international organisations**

1. **Subject to any restrictions stipulated in Article 62 and subject to Article 38(4)**, Eurojust may transfer personal data to an authority of a third country or to an international organisation ~~or Interpol~~, in so far as this is necessary for it to perform its tasks, ~~only~~ on the basis of:

a) decision of the Commission adopted in accordance with ~~Articles 25 and 31 of Directive 95/46/EC of the European Parliament and of the Council~~ **Article 34 of 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**<sup>39</sup> that that the third country or a territory, or a processing sector within that third country or the international organisation **in question** ensures an adequate level of protection (adequacy decision); or

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<sup>39</sup> This Draft Directive is part of the data protection package doc 5833/12 and 11624/1/13 Rev 1 which is likely to be adopted before the Eurojust Regulation. If not, references will be made to the either the relevant provisions of the existing Directive. (Articles 25 and 31 of 95/46/EC) or a generic reference made to Union legislation as appropriate.



b) an international agreement concluded between the Union and that third country or international organisation pursuant to Article 218 of the Treaty adducing adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals; or

c) a cooperation agreement concluded between Eurojust and that third country or international organisation in accordance with Article 27 of Decision 2002/187/JHA.

Such transfers do not require further authorisation. ~~Eurojust may conclude~~ **The working arrangements referred to in Article 38(2a) may be used to set out the modalities** to implement such agreements or adequacy decisions.

**1(a) Eurojust shall publish and keep up to date a list of adequacy decisions, agreements, administrative arrangements and other instruments relating to the transfer of operational personal data in accordance with paragraph 1.**

2. ~~By way of derogation from~~ **Subject to any restrictions stipulated in Article 62 and subject to Article 38(4), Eurojust may, in addition to paragraph 1,** authorise the transfer of **operational** personal data to third countries or international organisations ~~or Interpol~~ on a case-by-case basis if:

- a) the transfer of data is absolutely necessary to safeguard the essential interests of one or more Member States within the scope of Eurojust's ~~objectives~~ **tasks**;
- b) the transfer of the data is absolutely necessary in the interests of preventing imminent danger associated with crime or terrorist offences;
- c) the transfer is otherwise necessary or legally required on important public interest grounds of the Union or its Member States, as recognised by Union law or by national law, or for the establishment, exercise or defence of legal claims; or
- d) the transfer is necessary to protect the vital interests of the data subject or another person.

3. **Subject to any restrictions stipulated in Article 62 and subject to Article 38(4),**  
~~Moreover~~ the College may, in agreement with the European Data Protection Supervisor, authorise a set of transfers in conformity with points a) to d) above, taking into account the existence of safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals, for a period not exceeding one year, renewable.
4. The European Data Protection Supervisor shall be informed of cases where paragraph 23 was applied.
5. ~~Eurojust may transfer administrative personal data in accordance with Article 9 of Regulation (EC) No 45/2001.~~

## **CHAPTER VI**

### **FINANCIAL PROVISIONS**

*Article 48*

**Budget**

1. Estimates of all the revenue and expenditure of Eurojust shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in Eurojust's budget.
2. Eurojust's budget shall be balanced in terms of revenue and of expenditure.
3. Without prejudice to other resources, Eurojust's revenue shall comprise:
  - a) a contribution from the Union entered in the general budget of the European Union;
  - b) any voluntary financial contribution from the Member States;
  - c) charges for publications and any service provided by Eurojust;
  - d) ad-hoc grants.
4. The expenditure of Eurojust shall include staff remuneration, administrative and infrastructure expenses, operating costs **including funding for Joint Investigation Teams**.

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<sup>40</sup> Moved to 43a and 43b.

*Article 49*

**Establishment of the budget**

1. Each year the Administrative Director shall draw up a draft statement of estimates of Eurojust's revenue and expenditure together, for the following financial year, including the establishment plan, and send it to the ~~College~~ **Executive Board**. **[The European Public Prosecutor's Office,<sup>41</sup>] the European Judicial Network and other networks referred to in Article 39 shall be informed on the parts related to their activities in due time before forwarding the estimate to the Commission.**
2. The ~~Executive Board~~ **College** shall, on the basis of that draft, ~~produce~~ **prepare** a provisional draft estimate of Eurojust's revenue and expenditure for the following financial year **which shall be forwarded to the College for adoption.**
3. The provisional draft estimate of Eurojust's revenue and expenditure shall be sent to the European Commission by no later than 31 January each year. ~~Eurojust~~ **The College** shall send a final draft estimate, which shall include a draft establishment plan, to the Commission by 31 March.
4. The Commission shall send the statement of estimates to the European Parliament and the Council (the budgetary authority) together with the draft general budget of the European Union.
5. On the basis of the statement of estimates, the Commission shall enter in the draft general budget of the European Union the estimates it considers necessary for the establishment plan and the amount of the contribution to be charged to the general budget, which it shall place before the budgetary authority in accordance with Articles 313 and 314 of the Treaty.
6. The budgetary authority shall authorise the appropriations for **the contribution from the European Union to Eurojust's contribution.**
7. The budgetary authority shall adopt Eurojust's establishment plan.

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<sup>41</sup> The reference to the EPPO is in square brackets as it is outside the scope of the General Approach.

Eurojust's budget shall be adopted by the College. It shall become final following final adoption of the general budget of the European Union. Where necessary, it shall be adjusted by **Eurojust/the Administrative Director** the College accordingly.

9. For any building project likely to have significant implications for the **Eurojust's** budget **Article 88 of Regulation (EU) No 1271/2013 shall apply**. Eurojust shall inform the European Parliament and the Council as early as possible in accordance with the provisions of Article 203 of Regulation (EU, EURATOM) No 966/2012.

~~10. — Except in cases of force majeure referred to in Article 203 of Regulation (EU, EURATOM) No 966/2012 the European Parliament and the Council shall deliberate upon the building project within four weeks of its receipt by both institutions.~~

~~— The building project shall be deemed approved at the expiry of this four week period, unless the European Parliament or the Council take a decision contrary to the proposal within that period of time.~~

~~If the European Parliament or the Council raise duly justified concerns within that four week period, that period shall be extended once by two weeks.~~

~~If the European Parliament or the Council take a decision contrary to the building project, Eurojust shall withdraw its proposal and may submit a new one.~~

~~11. — Eurojust may finance a budget acquisition project through a loan subject to prior approval of the budgetary authority in accordance with Article 203 of Regulation (EU, EURATOM) No 966/2012.~~

#### *Article 50*

### **Implementation of the budget**

The Administrative Director shall act as the authorising officer of Eurojust and shall implement Eurojust's budget under his or her own responsibility and within the limits authorised in the budget.

*Article 51*

**Presentation of accounts and discharge**

1. By 1 March following each financial year, Eurojust's Accounting Officer shall send the provisional accounts to the Commission's Accounting Officer and the Court of Auditors.
2. Eurojust shall send the report on the budgetary and financial management to the European Parliament, the Council and the Court of Auditors, by 31 March of the following financial year.
3. By 31 March following each financial year, the Commission's Accounting Officer shall send Eurojust's provisional accounts consolidated with the Commission's accounts to the Court of Auditors.
4. In accordance with Article 148(1) of Regulation (EU, EURATOM) No 966/2012, the Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of Eurojust.
5. On receipt of the Court of Auditors' observations on Eurojust's provisional accounts pursuant to Article 148 of Regulation (EU, EURATOM) No 966/2012, the Administrative Director shall draw up Eurojust's final accounts under his or her own responsibility and submit them to the ~~College~~**Executive Board** for an opinion.
6. The ~~College~~**Executive Board** shall deliver an opinion on Eurojust's final accounts.
7. The **Accounting Officer of Eurojust** ~~Administrative Director~~ shall, by 1 July following each financial year, send the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the ~~College~~**Executive Board's** opinion.
8. The final accounts of Eurojust shall be published in the Official Journal of the European Union by 15 November of the **year** following **the respective financial** year.

9. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September of the following year at the latest. The Administrative Director shall also send this reply to the **College Executive Board** and to the Commission.
- ~~10. The Administrative Director shall report to the European Parliament on the performance of his/her duties when invited to do so. The Council may invite the Administrative Director to report on the performance of his/her duties.<sup>42</sup>~~
11. The Administrative Director shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question in accordance with Article 165(3) of Regulation (EU, EURATOM) N° 966/2012.
12. On a recommendation from the Council acting by a qualified majority, the European Parliament, shall, before 15 May of year N + 2, give a discharge to the Administrative Director in respect of the implementation of the budget for year N.

*Article 52*

**Financial Rules**

1. The financial rules applicable to Eurojust shall be adopted by the **Executive Board/College** in accordance with Commission delegated [Regulation ~~2343/2002~~ **No. 1271/2013** of ~~23 December 2002~~ **30 September 2013** on the framework financial regulation for the bodies referred to in Article ~~185~~ of Council Regulation (EC, Euratom) No ~~1605/2002~~ on the ~~Financial Regulation applicable to the general budget of the European Communities~~ **208 of Regulation 966/2012** and [after consultation with the Commission]. They shall not depart from [Regulation No. ~~2343/2002~~ **1271/2013** unless such departure is specifically required for Eurojust's operation and the Commission has given its prior consent.

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<sup>42</sup> The second sentence of 55(10) has been moved to 18(5).

2. Eurojust may award grants related to the fulfillment of its tasks referred to under Article 4(1). Grants provided for tasks under 4(1)(e) may be awarded without a call for proposals to the Member States.
3. In respect of the financial support to joint investigation teams activities, Eurojust shall establish in cooperation with Europol the rules and conditions upon which the applications shall be processed.<sup>43</sup>

## CHAPTER VII

### STAFF PROVISIONS

#### *Article 53*

#### **General provisions**

1. The Staff Regulations of the European Union and the Conditions of Employment of Other Servants of the European Union and the rules adopted by agreement between the institutions of the European Union for giving effect to those Staff Regulations and those Conditions of Employment of Other Servants shall apply to the staff of Eurojust.
2. Eurojust staff shall consist of staff recruited according to the rules and regulations applicable to officials and other servants of the European Union, taking into account all the criteria referred to in Article 27 of the Staff Regulations of Officials of the European Union laid down by Regulation (EEC, Euratom, ECSC) No 259/68, including their geographical distribution. ~~They shall have the status of permanent staff, temporary staff or local staff.~~

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<sup>43</sup> This provision should be mirrored in the Europol Regulation.



*Article 54*

**Seconded national experts and other staff**

1. Eurojust may make use, **in addition to its own staff**, of seconded national experts or other staff not employed by Eurojust.
2. The College shall adopt a decision laying down rules on the secondment of national experts **to Eurojust**.

**CHAPTER VIII**  
**EVALUATION AND REPORTING**

*Article 55*

**Involvement of the European ~~Parliament~~ Institutions and national Parliaments**

1. Eurojust shall transmit its Annual Report to the European Parliament, the **Council and national Parliaments**, which may present observations and conclusions.
2. The President of the College shall appear before the European Parliament **or the Council**, at their request, to discuss matters relating to Eurojust, and in particular to present its Annual Reports, taking into account the obligations of discretion and confidentiality. Discussions shall not refer directly or indirectly to concrete actions in relation with specific operational cases.
3. In addition to the other obligations of information and consultation set out in this regulation, Eurojust shall transmit to the European Parliament **and to national Parliaments in the respective official languages** for information:
  - a) the results of studies and strategic projects elaborated or commissioned by Eurojust;
  - b) working arrangements concluded with third parties;

c) the annual report of the European Data Protection Supervisor.

~~4. Eurojust shall transmit its Annual Report to the national Parliaments. Eurojust shall also transmit to the national Parliaments the documents referred to in paragraph 3.~~

#### *Article 56*

### **Evaluation and review**

1. By [5 years after the entry into force of this Regulation] at the latest, and every 5 years thereafter, the Commission shall commission an evaluation of the implementation and impact of this Regulation, as well as the effectiveness and efficiency of Eurojust and its working practices. ~~The evaluation shall, in particular, address the possible need to modify the mandate of Eurojust, and the financial implications of any such modification.~~ **The evaluation report shall be forwarded to the College for its observations. The College shall be involved in the evaluation.**
2. The Commission shall forward the evaluation report together with its conclusions to the European Parliament and national Parliaments, the Council and the College. The findings of the evaluation shall be made public.
- ~~3. On the occasion of every second evaluation, the Commission shall also assess the results achieved by Eurojust having regard to its objectives, mandate and tasks.~~

## **CHAPTER IX**

### **GENERAL AND FINAL PROVISIONS**

#### *Article 57*

### **Privileges and Immunities**

The Protocol on the Privileges and Immunities of the European Union shall apply to Eurojust and its staff.

*Article 58*

**Language arrangements**

1. Regulation No 1<sup>44</sup> shall apply to Eurojust.
- 1(a) The College shall decide by a two-thirds majority of its members on the internal language arrangements of Eurojust.**
2. The translation services required for the functioning of Eurojust shall be provided by the Translation Centre of the bodies of the European Union **unless the urgency of the matter requires another solution.**

*Article 59<sup>45</sup>*

**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.**

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<sup>44</sup> OJ L 17, 6.10.1958, p.385.

<sup>45</sup> SE scrutiny reservation

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 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 authority of the Member State who receives the information shall be bound by those conditions.**

*Article 60<sup>46</sup>*

**Transparency**

1. Regulation (EC) No 1049/2001 shall apply to documents which relate to Eurojust's administrative tasks.
2. **The College Executive Board shall, within six months of the date of its first meeting, adopt prepare the detailed rules for applying Regulation (EC) No 1049/2001 for adoption by the College.**

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<sup>46</sup> SE, FI and SI reservation. SE and FI entered a declaration to the minutes of the Council doc 17046/14.

3. Decisions taken by Eurojust under Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice of the European Union, under the conditions laid down in Articles 228 and 263 of the Treaty respectively.

### *Article 61*

#### **OLAF and the European Court of Auditors**

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No 1073/1999 **883/2013**, within six months from the entry into force of this Regulation, **Eurojust** ~~it~~ shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-fraud Office (OLAF) and adopt the appropriate provisions applicable to all the ~~employees of staff~~ **national members, their deputies and Assistants, seconded national experts and Eurojust staff** using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power of audit, on the basis of documents and on the spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds from Eurojust.
3. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EC) No **883/2013** and Council Regulation (Euratom, EC) No 2185/96<sup>47</sup> with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by Eurojust.
4. Without prejudice to paragraphs 1, 2 and 3, working arrangements with third countries, international organisations and Interpol, contracts, grant agreements and grant decisions of Eurojust shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

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<sup>47</sup> OJ L 292, 15.11.1996, p. 2.

## 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~~<sup>48</sup>.

## Article 63

### ***Administrative inquiries***

The administrative activities of Eurojust shall be subject to the inquiries of the European Ombudsman in accordance with Article 228 of the Treaty.

## Article 64

### **Liability other than liability for unauthorised or incorrect processing of data**

1. Eurojust's contractual liability shall be governed by the law applicable to the contract in question.
2. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by Eurojust.

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<sup>48</sup> OJ L 317, 3.12.2001, p. 1.

3. In the case of non-contractual liability, Eurojust shall, in accordance with the general principles common to the laws of the Member States and independently of any liability under Article 37, make good any damage caused by the College or the staff of Eurojust in the performance of their duties.
4. Paragraph 3 shall also apply to damage caused through the fault of a national member, a deputy or an Assistant in the performance of their duties. However, when he or she is acting on the basis of the powers granted to him or her pursuant to Article 8, his or her Member State of origin shall reimburse Eurojust the sums which Eurojust has paid to make good such damage.
5. The Court of Justice of the European Union shall have jurisdiction in disputes over compensation for damages referred to in paragraph 3.
6. The national courts of the Member States competent to deal with disputes involving Eurojust's liability as referred to in this Article shall be determined by reference to Council Regulation (EC) No 44/2001<sup>49</sup>.
7. The personal liability of its staff towards Eurojust shall be governed by the provisions laid down in the Staff Regulations or Conditions of Employment applicable to them.

*Article 65*

**Headquarters Agreement and operating conditions**

1. The seat of Eurojust shall be The Hague, The Netherlands.
2. The necessary arrangements concerning the accommodation to be provided for Eurojust in the Netherlands and the facilities to be made available by the Netherlands together with the specific rules applicable in the Netherlands to the Administrative Director, members of the College, Eurojust staff and members of their families shall be laid down in a Headquarters Agreement between Eurojust and the Netherlands concluded once the College's approval is obtained.

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<sup>49</sup> OJ L 12, 16.1.2001, p. 1. Regulation (EC) No 44/2001 is replaced by Regulation (EU) No 1215/2012 from 10 January 2015.

~~3. The Netherlands shall provide the best possible conditions to ensure the functioning of Eurojust, including multilingual, European-oriented schooling and appropriate transport connections.~~

### *Article 66*

#### **Transitional arrangements**

1. Eurojust shall be the general legal successor in respect of all contracts concluded by, liabilities incumbent on, and properties acquired by Eurojust as established by Council Decision 2002/187/JHA.
2. The national members of Eurojust who were seconded by each Member State under Decision 2002/187/JHA shall take the role of national members of Eurojust under Section II of this Regulation. ~~The term of their office may be extended once under Article 10(2) of this Regulation after the entry into force of this Regulation, irrespective of a previous extension.~~
3. The President and Vice-Presidents of Eurojust at the time of the entry into force of this Regulation shall take the role of the President and Vice-Presidents of Eurojust under Article 11, until their term in accordance with Decision 2002/187/JHA expires. They may be re-elected once after the entry into force of this Regulation under Article 11(3) of this Regulation, irrespective of a previous re-election.
4. The Administrative Director who was lastly appointed under Article 29 of Decision 2002/187/JHA shall take the role of the Administrative Director under Article 17 until his or her term as decided under Decision 2002/187/JHA expires. The term of the Administrative Director may be extended once after the entry into force of this Regulation.
5. This Regulation shall not affect the legal force of agreements concluded by Eurojust as established by Decision 2002/187/JHA. In particular, all international agreements concluded by Eurojust which have entered into force before the entry into force of this Regulation shall remain legally valid.



6. **The discharge procedure in respect of the budgets approved on the basis of Article 35 of Decision 2002/187/JHA shall be carried out in accordance with the rules established by Article 36 of Decision 2002/187/JHA.**
7. <sup>50</sup>**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.**

*Article 67*

**Repeal Replacement**

1. ~~This Regulation replaces and repeals~~ Decisions 2002/187/JHA, 2003/659/JHA and 2009/426/JHA **are hereby replaced for the Member States bound by this Regulation with effect from .....[date of application of this Regulation].**
2. **For the Member States bound by this Regulation,** ~~r~~References to the ~~repealed~~ Council Decisions referred to in paragraph 1 shall be construed as references to this Regulation.

*Article 68*

**Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.
3. **It shall apply from XXX<sup>51</sup>.**

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<sup>50</sup> DE scrutiny reservation on Art 66(7).

<sup>51</sup> 1 year after entry into force.

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

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

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

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 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 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.**