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European Union

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## COVER NOTE

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From:	Ms Michèle Coninx, President of Eurojust
date of receipt:	15 April 2015
To:	H.E. Mr Dzintars Rasnačš, Minister of Justice of Latvia
Subject:	Approval by the Council of the EU of the draft Agreement on Cooperation between Eurojust and Ukraine

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Delegations will find attached a letter from the President of Eurojust submitting, for Council's approval, a draft Agreement on Cooperation between Eurojust and Ukraine.

In accordance with Article 26a(2) of the Council Decision of 28 February 2002 setting up Eurojust, as last amended by Council Decision 2009/426/JHA of 16 December 2008, the Council may draw any conclusions it deems appropriate concerning this proposal.

Delegations are informed that this issue will be examined at the next meeting of JAIEX in May 2015.



**EUROJUST**  
The European Union's Judicial Cooperation Unit  
P.O. Box 16183 – 2500 BD The Hague • The Netherlands

D150087

To the attention of the President of the Council of the EU  
H.E. Mr Dzintars Rasnačs  
Minister of Justice of Latvia

The Hague, 14 April 2015

**Approval by the Council of the EU of the draft Agreement on Cooperation between Eurojust and Ukraine**

Your Excellency,

Eurojust is pleased to submit for your approval, in accordance with Article 26a(2) of the Council Decision of 28 February 2002 setting up Eurojust, as last amended by Council Decision 2009/426/JHA of 16 December 2008, the attached draft Agreement on Cooperation between Eurojust and Ukraine.

Eurojust is further pleased to state that the negotiations with Ukraine were concluded recently and full agreement has been reached on the attached document. As required, the draft Agreement on Cooperation was approved by the College of Eurojust on 10 March 2015, and by decision of 3 March 2015, has received a positive opinion from the Joint Supervisory Body of Eurojust concerning the provisions on data protection.

Eurojust welcomes the Council's approval of this Agreement on Cooperation between Eurojust and Ukraine to enable Eurojust, as well as the Member States, to benefit from cooperation with Ukraine and to ensure and enhance the safety of all EU citizens.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'M. Coninx', written over a horizontal line.

Michèle Coninx  
President of Eurojust

Encl.

- Draft Agreement on Cooperation between Eurojust and Ukraine
- Opinion of the Joint Supervisory Body of Eurojust on the draft Agreement on Cooperation between Eurojust and Ukraine



# Draft Agreement on Cooperation between Eurojust and Ukraine



## Draft Agreement on Cooperation between Eurojust and Ukraine

**Eurojust and Ukraine** (hereinafter referred to as the 'Parties'),

Having regard to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as last amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust (hereinafter referred to as the 'Eurojust Decision'), and in particular Article 26a thereof;

Having regard to the opinion of the Joint Supervisory Body, as established by Article 23 of the Eurojust Decision, of 3 March 2015;

Considering the interests of both Ukraine and Eurojust in developing a close and dynamic cooperation to meet the present and future challenges posed by serious crime, particularly organised crime and terrorism;

Considering the wish to improve judicial cooperation between Ukraine and Eurojust to facilitate the coordination of investigations and prosecutions covering the territory of Ukraine and one or more Member States of the European Union;

Considering that Ukraine has ratified Council of Europe Convention No. 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol that also play a fundamental role in the Eurojust data protection system;

Considering the high level of protection of personal data in the European Union, particularly the processing of personal data in accordance with the Eurojust Decision, the Eurojust Rules of Procedure on Data Protection and other applicable rules; and

Respecting the fundamental rights and principles as set out in the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, which are reflected in the Charter of Fundamental Rights of the European Union;

HAVE AGREED AS FOLLOWS:

### Article 1 Definitions

For the purposes of this Agreement:

- a) 'Member States' means the Member States of the European Union;
- b) 'College' means the College of Eurojust, as referred to in Article 10 of the Eurojust Decision;

- c) 'National Member' means the National Member seconded to Eurojust by each Member State of the European Union, as referred to in Article 2(1) of the Eurojust Decision;
- d) 'Deputy' means a person who may act on behalf of or substitute the National Member, as referred to in Article 2(2) and Article 2(5) of the Eurojust Decision;
- e) 'Assistant' means a person who may assist a National Member or the Liaison Prosecutor, as referred to in Article 2(2) of the Eurojust Decision and in Article 5 of this Agreement, respectively;
- f) 'Liaison Prosecutor to Eurojust' (hereinafter referred to as 'Liaison Prosecutor') means a public prosecutor subject to the national law of Ukraine as regards his or her status;
- g) 'Liaison Magistrate to Ukraine' means a magistrate posted by the College of Eurojust to Ukraine in accordance with Article 27a(1) of the Eurojust Decision;
- h) 'National Correspondent for Terrorism Matters' is one of the contact points designated by the Ukrainian authorities in accordance with Article 7 of this Agreement, specifically in charge of handling the correspondence related to terrorism matters;
- i) 'Judicial authorities' for Ukraine are courts of general jurisdiction, public prosecutors of all levels and bodies of pre-trial investigation;
- j) 'Administrative Director' means the Administrative Director as referred to in Article 29 of the Eurojust Decision;
- k) 'Data Protection Officer of Eurojust' is a specially appointed member of the Eurojust staff whose tasks are defined in Article 17 of the Eurojust Decision, including, in particular, ensuring the lawfulness and compliance of the processing of personal data by Eurojust in an independent manner;
- l) 'Eurojust staff' means the staff referred to in Article 30 of the Eurojust Decision;
- m) 'Eurojust rules of procedure on data protection' means the rules of procedure for the processing and protection of personal data at Eurojust, approved by the Council of the European Union on 24 February 2005;
- n) 'Personal data' means any information relating to an identified or identifiable natural person (hereinafter referred to as the 'data subject'). An identifiable person is one who can be identified, directly or indirectly, particularly by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity; and
- o) 'Processing of personal data' means any operation or set of operations which are 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.

## **Article 2**

### **Purpose of this Agreement**

The purpose of this Agreement is to enhance the cooperation between Eurojust and Ukraine in combating serious crime, particularly organised crime and terrorism.

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### **Article 3**

#### **Scope of cooperation**

1. Eurojust and Ukraine shall cooperate in the fields of activity as set forth in Articles 6, 7 and 27b of the Eurojust Decision and taking into account the powers granted to National Members in accordance with Articles 9a-9f of the Eurojust Decision within the competences of Eurojust as set forth in Article 4 of the Eurojust Decision.
2. If Eurojust's mandate is changed to cover fields of activities and/or competences in addition to those set forth in paragraph 1, Eurojust may, from the date when the change to Eurojust's mandate enters into force, submit to Ukraine in writing a proposal to extend the scope of application of this Agreement to include the new mandate. This Agreement shall apply in relation to the new mandate as of the date on which Eurojust receives the written acceptance by Ukraine in accordance with its internal procedures.

### **Article 4**

#### **Competency for the execution of this Agreement**

1. The Competent Authority of Ukraine for the execution of this Agreement is the General Prosecutor's Office.
2. Within Eurojust and in accordance with Articles 6 and 7 of the Eurojust Decision, the National Members concerned and the College are competent for the execution of this Agreement.

### **Article 5**

#### **Liaison Prosecutor to Eurojust**

1. To facilitate cooperation as laid down in this Agreement, and in accordance with the provisions of Article 26a(2) of the Eurojust Decision, Ukraine may second a Liaison Prosecutor to Eurojust.
2. The mandate and the duration of secondment shall be determined by Ukraine.
3. The Liaison Prosecutor may be assisted by one person. When necessary, the assistant may replace him or her.
4. Ukraine shall inform Eurojust of the nature and extent of the judicial powers of the Liaison Prosecutor within its own territory in order to accomplish his or her tasks in accordance with the purpose of this Agreement. Ukraine shall establish the competence of its Liaison Prosecutor to act in relation to foreign judicial authorities.
5. The Liaison Prosecutor shall have access to the information contained in the national criminal records or in any other register of Ukraine in the same way as stipulated by Ukrainian law in the case of a prosecutor or person of equivalent competence.
6. The Liaison Prosecutor may contact the relevant competent authorities of Ukraine directly.
7. Eurojust shall endeavour to provide sufficient facilities to the Liaison Prosecutor, which shall include the use of office space and telecommunications services, to the extent possible within the constraints of the infrastructure and budget of Eurojust. Eurojust may request reimbursement of any or all expenses incurred by Eurojust in providing these facilities. However, no reimbursement will be requested in case Eurojust posts a Liaison Magistrate and the same facilities are provided to him. All details about the provision of the facilities and reimbursement of expenses shall be agreed between the Competent Authority of Ukraine and Eurojust before the detachment of the Liaison Prosecutor to Eurojust.
8. The working documents of the Liaison Prosecutor shall be held inviolable by Eurojust.

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## **Article 6 Eurojust Liaison Magistrate**

For the purpose of facilitating judicial cooperation with Ukraine in cases in which Eurojust provides assistance and in accordance with the provisions of Article 27a(1) of the Eurojust Decision, the Parties may decide the posting of a Eurojust Liaison Magistrate to Ukraine. However, Eurojust may only enter into negotiations on the posting of a Eurojust Liaison Magistrate to Ukraine after it has received the approval of the Council of the European Union in that respect.

## **Article 7 Contact point to Eurojust**

1. Ukraine shall put in place or appoint at least one contact point to Eurojust within the office of the competent authority of Ukraine. This appointment shall be duly notified to Eurojust by official letter.
2. Ukraine shall designate one of its contact points as Ukrainian National Correspondent for Terrorism Matters.

## **Article 8 Operational and strategic meetings**

1. The Liaison Prosecutor, his or her assistant, and representatives of other relevant competent authorities of Ukraine, including the contact point to Eurojust, may participate in operational and strategic meetings, at the invitation of the President of the College and with the approval of the National Members concerned.
2. National Members, their deputies and assistants, the Administrative Director and Eurojust staff may also attend meetings organised by the Liaison Prosecutor or other relevant competent authorities of Ukraine, including the contact point to Eurojust.

## **Article 9 Exchange of information**

1. In accordance with this Agreement, the Parties may exchange all information that is adequate, relevant and not excessive in order to achieve the purpose of this Agreement as laid down in Article 2 thereof.
2. The requesting Party shall notify the other Party of the purpose for which the information is requested. In the case of spontaneous transfer of information, the Party providing information shall notify the other Party of the purpose for which the information is supplied.
3. The Party providing the information may impose restrictions to the use of the information provided, which shall be respected by the other Party. This also includes possible access restrictions, restrictions on further transmission and terms for deletion or destruction. Notification may also be given at a later stage, when the need for such restrictions becomes apparent after the transfer.
4. The Parties shall keep a record of the transmission and receipt of data communicated under this Agreement, including the grounds for such transmissions.

## **Article 10 Channels of transmission**

1. The information shall be exchanged:
  - a) either between the Liaison Prosecutor or, if no Liaison Prosecutor is appointed or otherwise available, the contact point to Eurojust and the National Members concerned or the College; or

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- b) if Eurojust has posted a Liaison Magistrate to Ukraine, between the Eurojust Liaison Magistrate and any competent authority of Ukraine; or
  - c) directly between the judicial authority in charge of investigating and/or prosecuting the case and the National Members concerned or the College. In this event, the Liaison Prosecutor or, if applicable, the Eurojust Liaison Magistrate, shall be informed about any such information exchanges.
2. The Parties are not precluded from agreeing to use other channels for the exchange of information in particular cases.
  3. Both Parties shall ensure that their respective representatives are authorised to exchange information at the appropriate level and are adequately screened.

## **Article 11**

### **Privacy and data protection**

1. The Parties recognise that the appropriate and adequate handling and processing of personal data they acquire from each other is of critical importance to preserving confidence in the implementation of this Agreement.
2. The Parties shall guarantee a level of protection for personal data supplied by the other Party at least equivalent to that resulting from the application of the principles contained in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and subsequent amendments thereto as well as in the principles laid down in the Eurojust Decision and in the Eurojust rules of procedure on data protection.
3. In respect of personal data exchanged pursuant to this Agreement, the Parties shall ensure that
  - a) the personal data are fairly processed;
  - b) the personal data provided are adequate, relevant and not excessive in relation to the specific purpose of the request or transfer as defined in Article 9(2) of this Agreement;
  - c) the personal data are retained only so long as necessary for the purpose for which the data were provided or further processed in accordance with this Agreement; and
  - d) possibly inaccurate personal data are timely brought to the attention of the receiving Party in order that appropriate corrective action is taken.

## **Article 12**

### **Transmission of special categories of personal data**

1. Personal data revealing racial or ethnic origin, political opinions or religious or other beliefs, trade union membership or concerning health and sexual life may only be provided if they are strictly necessary for a purpose set forth in Article 2 of this Agreement.
2. The Parties shall take adequate safeguards, particularly appropriate security measures, in order to comply with the special sensitivity of the categories of personal data mentioned in paragraph 1 of this Article.

## **Article 13**

### **Right of access to personal data**

1. The data subject is entitled to have access to personal data exchanged under this Agreement. Access is exercised in accordance with the law applicable to the Party to which the request is submitted. That Party shall ensure that its decision is communicated to the data subject in a timely manner. Access to personal data shall be denied if providing such access may jeopardise
  - a) the purposes of the processing;



- b) criminal investigations or prosecutions conducted by the competent authorities in Ukraine or by the competent authorities in the Member States which Eurojust is assisting; or
  - c) the rights and freedoms of third parties.
2. The Party to which the request is submitted shall give the other Party the opportunity to express its opinion as to the possible existence of one of the grounds to deny access as set forth in paragraph 1 of this Article.
  3. This Article is without prejudice to any rights an individual may have under the law applicable to the transmitting Party to seek release of information from that Party, or other appropriate relief.

#### **Article 14**

##### **Right of correction, blockage and deletion of personal data**

1. The data subject shall be entitled to request to the Party which has processed data relating to him/her under this Agreement to correct, block or delete those data if they are incorrect or incomplete or if their collection, further processing or storage contravenes this Agreement or the respective rules applicable to the Parties. Such request shall be made in writing and shall include all relevant information to substantiate it.
2. If a Party becomes aware either via the request of the data subject, via notification from the transmitting Party or via some other way that information it has received from the other Party is not accurate, it shall take all appropriate measures to safeguard against erroneous reliance on such information, which may include supplementation, deletion or correction of such information.
3. If a Party becomes aware that information it possesses causes significant doubt as to the accuracy of information received pursuant to this Agreement, or an assessment made by the other Party of the accuracy of information or the reliability of a source, it shall inform the other Party thereof.

#### **Article 15**

##### **Time limits for the storage of personal data**

Personal data shall be stored only for so long as necessary for the achievements of the purpose of this Agreement or for the purposes for which the data were collected or further processed according to Article 2 of this Agreement.

#### **Article 16**

##### **Data security**

The Parties ensure that the necessary technical measures and organisational arrangements are utilised to protect personal data received under this Agreement against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration, access or any unauthorised form of processing. The Parties in particular ensure that only those authorised to access personal data can have access to such data.

#### **Article 17**

##### **Onward transfers**

The Parties shall not communicate any information provided by the other Party to any third State or body without the consent of the latter and without appropriate safeguards regarding the protection of personal data.

## **Article 18 Liability**

1. Ukraine shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data exchanged with Eurojust. Ukraine shall not claim that Eurojust had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party.
2. Without prejudice to Article 24 of the Eurojust Decision, if legal or factual errors occurred as a result of data erroneously communicated by Eurojust or one of the Member States of the European Union or another third State or third body, Eurojust shall be bound to repay, upon request, the amounts paid as compensation under paragraph 1 of this Article, unless the data were used in breach of this Agreement. The provisions of this paragraph shall also apply in cases in which the legal or factual errors occurred as a result of failures on the part of Eurojust or one of the Member States of the European Union or another third State or third body to comply with its obligations.
3. In cases in which Eurojust is obliged to repay to Member States of the European Union or another third State or third body amounts awarded as compensation for damages to an injured party, and the damages are due to Ukraine's failure to comply with its obligations under this Agreement, Ukraine shall be bound to repay on request the amounts which Eurojust paid to a Member State or to another third State or third body to make up for the amounts it paid in compensation.
4. The Parties shall not require each other to pay compensation for damages under paragraphs 2 and 3 of this Article to the extent that the compensation for damages was enforced as punitive, increased or other non-compensatory damages.

## **Article 19 Regular consultations**

1. The Parties shall hold at least once per year regular exchanges of views with regard to the implementation and further developments in the field of data protection and data security.
2. To that end, the Data Protection Officer of Eurojust and the Data Protection Authority of Ukraine will report to each other at least once per year on the state of implementation of the data protection provisions of the Agreement.
3. When necessary, issues identified by the Parties in the context of these data protection consultations will be reported to the appropriate oversight mechanisms, and in particular to the Joint Supervisory Body of Eurojust.

## **Article 20 Monitoring of the implementation**

1. With the purpose of monitoring the implementation of this Agreement, the Parties shall carry out a joint annual review of its implementation.
2. Any possible issues identified by the Parties in the context of these joint reviews shall be jointly addressed by the Parties in accordance with Article 23 of this Agreement.

## **Article 21 Oversight of implementation**

The execution and implementation of this Agreement by the Parties shall be subject to oversight in accordance with their applicable law and procedures. The Parties shall utilise their respective administrative, judicial or supervisory bodies that will ensure an appropriate level of independence of the oversight process.

## **Article 22 Expenses**

Without prejudice to Article 5(7) of this Agreement, neither Party shall make any pecuniary claim against the other Party for expenses arising out of the execution of this Agreement. Should expenses of an extraordinary nature arise out of the execution of this Agreement, the Parties may consult with a view to determining the manner in which they shall be addressed.

## **Article 23 Settlement of disputes**

1. On request of either of them, the Parties shall promptly meet in order to solve any dispute concerning the interpretation or application of this Agreement or any question affecting the relationship between them.
2. If a dispute over the interpretation or application of this Agreement cannot be resolved, the Parties may enter into negotiations on the specific issue.

## **Article 24 Amendments**

1. This Agreement may be amended by mutual consent between the Parties in written form at any time. Such amendment will enter into force after the Parties have notified each other of the completion of their respective internal requirements.
2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either Party.

## **Article 25 Termination of this Agreement**

1. This Agreement may be terminated by each Party within three months' notice.
2. In case of termination, the Parties shall reach agreement under the conditions set out in this Agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either of the Parties is entitled to request deleting the information which has been communicated.

## **Article 26 Entry into force**

As soon as the Parties have complied with their legal requirements, they shall notify each other in writing through diplomatic channels of the completion of the internal procedures necessary for the entry into force of this Agreement. This Agreement shall enter into force on the day following the last notification.

Done at .....this ..... day of ..... two thousand and (...) in duplicate in the Ukrainian and English languages, both texts being equally authentic.

For Ukraine

For Eurojust

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[...]

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President of the College

**Opinion of the Joint Supervisory Body of Eurojust on the draft agreement  
between Eurojust and Ukraine**

At the meeting on the 3<sup>rd</sup> of March 2015, the Joint Supervisory Body considered the draft agreement between Eurojust and Ukraine in order to give its opinion in accordance with Article 26a (2) of the Eurojust Decision.

The Joint Supervisory Body appreciates the fact that Eurojust, through its external relations team and the Data Protection Service, has provided it with extensive information through the process of negotiations, which started back in 2006, and is pleased to observe that the level of protection in Ukraine has been checked by the Data Protection Officer.

After careful deliberation and discussion, the Joint Supervisory Body concluded as follows:

Considering that Ukraine has ratified the Convention 108 of the Council of Europe on the 30 September 2010,

Considering that Ukraine has ratified the Additional Protocol to the Council of Europe Convention 108 on 30 September 2010,

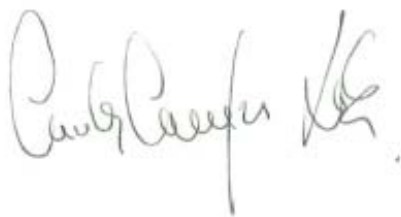
Considering the fact that the data protection legislation applicable in Ukraine has been substantially modified and that the comments and suggestions made by Eurojust in order to ensure an adequate level of protection have been taken on board to the satisfaction of the Data Protection Officer of Eurojust,

Considering that the issues regarding the independence of the competent supervisory authority in Ukraine have been satisfactorily addressed by the transfer of the supervisory tasks to the Ombudsman which enjoys full independence in accordance with the Ukrainian Constitution,

Considering that the draft agreement contains all relevant data protection provisions in line with the model agreement positively evaluated by the Joint Supervisory Body in previous occasions,

The Joint Supervisory Body considers the provisions on the exchange of personal data contained in the draft agreement between Eurojust and Ukraine adequate and gives therefore a positive opinion on the draft agreement.

Done at The Hague,  
3 March 2015



Carlos Campos Lobo  
Chair of the Joint Supervisory Body