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COVER NOTE

from: The General Secretariat of the Council
to: Delegations

Subject: Comments from Sweden on Articles 1-8 of the Draft Regulation

Delegations will find comments from Sweden which have been included in the Annex to this document.

Sweden

Article 1

1.1.1.1. Paragraph 3

We would prefer to have the article, as much as possible, in line with article 1 of the Council Decision on Eurojust. The detailed text in the proposal does not seem to add anything in substance and the new layout might give rise to misinterpretation.

1.2. Article 2

1.2.1.1. Paragraph 1

The term “prosecution on common bases” needs further clarification, recital (9) does not provide sufficient guidance on how the term should be interpreted.

1.2.1.2. Paragraph 3

The wording “on its own initiative” needs to be explained. What initiatives should Eurojust be able to take and what form should Eurojust have when it takes such actions?

2. ARTICLE 3

The proposed article does not contain a provision that corresponds to article 4 paragraph 2 in the Council Decision on Eurojust. Excluding Eurojust from handling cases according to that provision would be a clear step backwards. It would for example imply that Eurojust no longer would be competent to deal with European Arrest Warrants concerning other crimes than those listed in the annex to the regulation.

2.1.1.1. Paragraph 1

The annexes to the Eurojust and Europol regulations should correspond.

Since there are indications that not all Member States will participate in the EPPO, the need to allow Eurojust continued competence for crimes against the financial interests of the EU should be carefully considered. This consideration should also include the possibility of allowing Eurojust competence over the relevant crime type also for Member States who participate in the EPPO since any reduction of Eurojust's competence could potentially lead to a less effective international co-operation.

3. ARTICLE 4

The article lacks an explicit provision on the so called horizontal issues. During the discussions in the working group, the Commission explained that these issues are covered by article 5 paragraph 2 c). The horizontal issues are an important part of Eurojust's activities and we would prefer to have this task included and explained in article 4.

3.1.1.1. Paragraph 1 e)

Article 4 in the proposal for a regulation on Europol contains a similar provision on Europol's involvement in Joint Investigation Teams. In order to avoid possible overlaps between Eurojust and Europol, the working group managing the Europol proposal should be consulted in this regard.

3.1.1.2. Paragraph 2

The possibility to add a provision specifically aiming at speeding up the execution of requests for mutual legal assistance, EIO and EAW should be considered. The possibilities under article 4.5 do not seem to be sufficient.

Furthermore, the possibility to add a provision on the possibility for Eurojust to follow up on agreements made during coordination meetings should be considered.

3.1.1.3. Paragraph 5

The term “recurrent refusals” should be clarified. Should the refusals occur in the same case or does it take refusals in several cases in order to constitute “recurrent refusals”?

4. GENERAL REMARKS CONCERNING CHAPTERS II–III

The deliberations on the proposal for a regulation on Eurojust constitute a unique opportunity to tackle the insufficiencies in Eurojust’s legal framework that have been discovered over the years. Unfortunately, this is not adequately addressed in the proposal. We are therefore, as proposed during the discussions in the working group, strongly in favour of thematic discussions concerning chapters II-III. We also believe that these discussions would benefit from the presence of Eurojust. Without abstaining from participating in the future thematic discussions, we would like to comment on a few articles proposed by the Commission.

4.1. Chapter II

We believe that the national members should be enabled to focus more on Eurojust’s operative functions and spend less time on administrative matters. Eurojust’s organisation should be structured in order to ensure this development. It is however questionable whether the measures outlined under section III–V are sufficient. Other more effective alternatives should be considered during the thematic discussions.

5. ARTICLE 6

For the sake of completeness, the Eurojust Administration should also be mentioned under this article.

Article 7

5.1.1.1. Paragraph 2

The obligation to appoint an assistant is questioned. For small Member States with a limited number of cases, the appointment of a national member and a deputy would appear to be sufficient. Furthermore, we oppose to the proposal that the deputy and assistant shall have their regular place of work at Eurojust. The Swedish deputy national member is placed in Sweden at the largest International Prosecution Office. Nevertheless, the absolute majority of her workload consists of Eurojust related cases. Working closely with the prosecutors implies that she is able to assist them more swiftly and thus making Eurojust even more effective. We therefore mean that the proposed provision could in fact be counterproductive.

The deputy and assistant shall, according to paragraph 2, have their regular place of work “at Eurojust” whereas the national member, according to paragraph 1, shall have the regular place of work “at the seat of Eurojust”. Is there a difference between these two expressions?

6. ARTICLE 8

According to the current Council Decision on Eurojust it is possible for a Member State to give its national member powers that go beyond the wording in articles 9a–9f. Sweden has given its national member powers that go well beyond these articles and we oppose to a provision that would end this arrangement. We cannot see the point in harmonising the powers by reducing the some national member’s powers. Consequently, we suggest that the wording “shall” in the first sentence in paragraph 1 should be replaced with “shall at least”.

6.1.1.1. Paragraph 2– 3

Not all investigative measures can be decided by the prosecutors, on the contrary, several measures require the involvement of courts and this prerequisite should be mentioned in the current provisions. To ensure that requests from the national members are dealt with sufficient speed by the courts, a provision that corresponds to article 9e paragraph 2 in the Council Decision on Eurojust should be included in the regulation.