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COVER NOTE

from:	The General Secretariat of the Council
to:	Working Party on Cooperation in Criminal Matters
Subject:	Comments on Articles 9-26 of the Draft Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust)

On the 13-14 November, the Working Party on Cooperation in Criminal Matters (COPEN) continued its examination of the Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust)[1]. At that meeting, delegations examined Articles 9-26 of the proposal.

At the end of the Working Party, delegations were invited to provide written comments on these articles to the General Secretariat of the Council by 13 December 2013. Seven delegations; Austria, the Czech Republic, France, Germany, Hungary, Sweden and the United Kingdom submitted comments which have been included in the Annex to this document.

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[1] Doc 12566/13

Austria

Article 10

Para. 1

Firstly, the Austrian Delegation would like to reiterate its support for a general discussion on structure and governance of Eurojust.

Secondly, regarding the proposal for a regulation Austria would like to point out that the administrative burden on the College should be reduced to the necessary minimum. Therefore the Austrian delegation is very much in favour of the proposal presented by Ireland during the last COPEN Working Party, which would leave the College freedom to delegate administrative work to the executive board. This decision should be taken by the College, e.g. by setting up rules of procedures etc., and should not be regulated in general in the Eurojust-Regulation. Regarding the idea of an external management board Austria is not in favour of this solution.

Members of an external management board are not familiar with the very special task of Eurojust. Therefore it is doubtful that there would be an added value to the work and tasks of Eurojust.

With regard to the distinction between operational and management functions of the College, made in lit. a and b Austria shares the view of other delegations that several topics will be related to both, operational and management functions of the College. The current Rules of Procedure of Eurojust can serve as an example. According to the proposal of the Commission they would be adopted in a management format of the College in the future. However, they contain of specific rules for the operative work of the College and its members as well as coordination meetings and exercise of powers under Art. 6 and 7 of the Decision!

Austria is of the opinion that rules of procedure for the operational work of Eurojust should be decided on by the College only – without any influence of the Commission. Furthermore, the adoption of the annual budget will have a direct effect on Eurojusts operational work in particular the funding of Joint Investigation Teams or of co-ordination meetings.

Furthermore Austria is of the opinion that the European Commission should have one representative like any Member State. Para. 10 of the Common Approach states with regard to the composition of the management board: "two representatives from the Commissions without prejudice to the relevant arrangements for existing agencies". According to the special role of Eurojust among the agencies of the EU, Austria is of the opinion that a distinction is justified.

Para. 2

Regarding the term of office of the deputy of the national member, Austria is in favour of a more flexible approach, i.e. leaving this decision up to the Member States. Austria has concerns about recruitment because applicants might be deterred by the amount of the four years terms of office. The same flexible approach is also needed concerning the renewal of office of the national member.

Article 12

Concerning para. 2 Austria is of the opinion that a smaller number than a third of the NM shall have the right to request a meeting of the College in order to ensure the balance versus the Commission.

Article 13

Austria reiterates the proposal and arguments mentioned in Art 10. with regard to the number of representatives of the Commission.

Article 14

Austria opposes the right of the representatives of the Commission to have votes in the election of the President and Vice-Presidents. The representatives of the Commission already take part in the meetings dealing with issues listed in para. 1 and are furthermore part of the Executive Board together with the President and Vice-Presidents. The Commission is therefore taking part in the decision making of very important issues of Eurojust and the Austrian Delegation can see no reason for the Commission taking part in the election of the mentioned functions, as well. Furthermore it has to be noted that the Administrative Director is the only legal representative. It is therefore clear that the President's and Vice-President's functions are devoted to operational matters. Therefore they should be elected by the National Members only.

Article 15

The Austrian Delegation is of the opinion that the college should adopt the programming document independently. Therefore the phrase "taking into account the opinion of the Commission" might give rise to problems. Additionally it has to be mentioned that the Commission takes part in the adoption anyway (Art. 14 para. 1, Art. 10 para. 1 (b)). Austria therefore proposes to change the wording of para. 1 to: "after having heard the Commission".

Article 16

The Austrian Delegation would like to stress the fact that according to the Common Approach the Executive Board should be a secondary body focusing on budgetary and administrative issues. The proposal of Art. 16, in particular para. 2 lit. c, e and g seem to go far beyond this general rule. In fact, the relation to the College set out in para. 2 lit. g should be the other way around. It is therefore proposed to add a lit. m to Art. 14, stating: "take any other decision not expressly attributed to the Executive Board in Article 16 or under the responsibility of the Administrative Director in accordance with Article 18".

Regarding the establishment of the Executive Board one has to bear in mind, that according to the Common Approach it was meant for Agencies where the members of the Management Board don't have their regular place of work at the seat of the agency and get together for meetings twice a year.

In case an Executive Board is established within Eurojust at least two additional National Members should be delegated from the College for the reason of proportionality. Alternatively, it could be considered composing the Executive Board of two other National Members instead of the Vice Presidents due to the fact that they would represent the President in case he/she is unable to attend the meetings. Furthermore the reference to a "two-year rotation system" in Art. 16 para. 5 seems too vague as it does not state how the national member should be elected.

Regarding para. 6 every member of the Executive Board should have the possibility to request a meeting. There are no grounds to grant the Commission such a privileged position in the relation to the National Members.

For the reason of transparency the Austrian Delegation proposes to add to para. 7 the possibility for all the National Members to attend the meetings of the Executive Board as proposed for the European Public Prosecutor.

Article 17

The role of the Commission in the appointment procedure of the Administrative Director has to be questioned because, according to the proposal, the Commission does not only make the proposal, but also has a right to vote. The influence of the Commission regarding the appointment procedure is therefore considered to be disproportionate. Austria would therefore support the proposal of the German Delegation that the list of candidates for the election of the Administrative Director shall be prepared by the Executive Board.

The procedures for the evaluation of the work of the Administrative Director (para. 3) should take account of the College as well. It goes without saying that mainly the College has a vital interest that the Administrative Director should fulfil his/her tasks efficiently and properly.

With regard to the proposal on the extension of the term of office of the Administrative Director Austria would like to grant the right to propose to a certain number of National Members also.

The same goes for the removal. As mentioned beforehand it is mainly the College which has a vital interest in the efficiency of administration of Eurojust and therefore should have the possibility to make the mentioned proposals.

Finally, Austria would like to support the German proposal of limiting the term of office of the Administrative Director with four years instead of five.

Article 18

The reference to the Executive Board in para. 4 (c.) seems to be superfluous.

Articles 19 und 20

The Austrian Delegation strongly supports the proposal of the Commission and is of the opinion that the system of On Call Coordination as well as the ENCS might be of greater value if the proposal for the regulation would make full use of the powers stated in Art. 85 TFEU.

With regard to the ENCS the Austrian Delegation would like to point out that one of the core competences of the ENCS is "to ensure that the Case Management System […] receives information related to the Member State concerned in an efficient and reliable manner".

As the final report on the mutual evaluation is to be issued in the future Austria would like to postpone the negotiations on the ENCS because it might influence the decision on the added value of the ENCS significantly if it turns out that the information stated in Art. 13 of the current Decision is not submitted or submitted reluctantly by the Member State's authorities.

Article 21

Austria shares the view of many other Member States, who pointed out in the last COPEN Working Party that further extension of the information exchange would overburden national judicial authorities as well as Eurojust. Although the arguments of the Commission to simplify the current situation are understandable the added value for Eurojust needs to be questioned,as well. With regard to this argument Austria proposes to take the experience of Eurojust intoconsideration.

Finally, it has to be mentioned that the current Eurojust Decision has not been fully implemented yet. Therefore it is too early to propose further extension of exchange of information.

Czech Republic

Article 21

The Czech Republic believes there is a need to fundamentally review the model of information exchange between national authorities and Eurojust. It is relatively new element introduced in 2008 and not fully implemented and evaluated yet. However, already the first few evaluation reports show the weak practical results of the mechanism and are a source of concern among practitioners.

Although we fully acknowledge the importance of having access to relevant information by Eurojust, we are not convinced this is the way how it should be obtained. The definitions in Article 21 are broad, described by strictly formal criteria and do not take into account the nature and complexity of a case. Eurojust is to be supplied with a sort of information which is mostly irrelevant for its actual work and has rather statistical nature. National authorities are under numerous administrative obligations while there is no obvious benefit coming back to them. The whole process becomes ineffective in terms of the considerable administrative burden being not in balance with the outcome of the process.

In Member States, Eurojust is currently valued as a body which role is to provide support, facilitate cooperation and coordination during investigation and prosecution. Eurojust has not been meant as an analytical body – Europol has been established for this purpose and if the national police units provide data from their investigations then the links among countries would be revealed already at the early stage.

Our main concern is that the implementation of the information duties will cause unnecessary bureaucratic overburdening of national judicial authorities and as a result will discourage them from seeking assistance from Eurojust.

What we suggest at this stage is to re-examine carefully the proposed Article 21 and the individual provisions on information exchange. It should be assessed whether it could be defined in such a way as to cover only the relevant cases where the information exchange would be of any use for Eurojust and the national authorities.

Article 21(3)

This paragraph is rather unclear and will require further explanation. It is difficult to think of a situation where a case concerns a national member and this national member does not know about it and needs to be informed thereof by a national authority. We would be very grateful if some example could be stated. Also some data on frequency of this kind of situations would be welcome so that we could assess whether there is really a need for a specific provision on this subject in the proposal.

Article 21(4)

Since JITs can be and regularly are funded with assistance of Eurojust, there is a solid chance that this information would come to Eurojust even without this specific provision. JIT Secretariat has been established as well as national experts for JITs who collect all necessary information. Evaluation form will be soon introduced for practitioners to fill in after a JIT will have concluded its work. This paragraph will cause duplication of efforts and will serve just for statistical purpose. There is no added value for the work of practitioners.

Article 21(5)

From the practical point of view, this is the most problematic provision. It defines the case by formal criteria, i.e. number of Member States involved, but is silent as regards the type of Member States' involvement and the type of cooperation requested. Hence, it covers also simple and straightforward requests where Eurojust's assistance would normally not come into question.

An example could be a case where mutual legal assistance is requested in relation to information from motor vehicles-registers of several Member States. Although the request would formally fulfil the criteria set down in Article 21(5), it is certainly not meant to be a complex case requiring the help of Eurojust where the record kept on such a case will serve any purpose in the future. Another example is request for information on phone numbers without seeking their interceptions or simple request to interview victims in internet frauds (or any other simple request to interview witnesses).

Although the Commission claims to have introduced the information exchange to support the work of Eurojust and national authorities in order to obtain information about possible links, the real added value is more than questionable. It is important to note that the data will never be complete as they are collected selectively. There can be a case in country A and a case in country B and they will never exchange letters of request or they will separately send a letter of request to country C (in country A and in country B the request for judicial cooperation is affecting only two Member States). Although there is a link between these countries, this will never be identified through Article 21 channel.

Last but not least, the proposed wording of Article 21 significantly extends information duty in comparison with the current Eurojust Council Decision, as it concerns whole crime types and not anymore just the listed ones. There is no justification for such extension considering the mandate of Eurojust.

Article 21(6) (a)

This is another example of an unnecessary requirement. Any potential conflict can be solved directly, without the involvement of Eurojust. The matter is referred to Eurojust only in certain cases if deemed appropriate by the competent authority. What is the added value of the information in case Eurojust is not involved?

Article 21(6) (b)

Again, it is unclear what would be the added value of this provision apart from a statistical input. Cases with controlled deliveries are usually rather complex and time consuming. If the national authorities require assistance, they turn to Eurojust. Otherwise they are able to solve all practicalities via police assistance. To fill a form with information on controlled deliveries would be additional, unnecessary burden on the investigative authorities.

Article 21(6) (c)

Repeated difficulties or refusals can be reported to Eurojust under proposed Article 4 if assistance of Eurojust is needed in the opinion of a national authority. If this is not the case, then why should Eurojust be informed?

Finally, in this context, it is also necessary to point out rather restrictive policy concerning the period of time during which Eurojust is entitled to store personal data. The effort of national authorities invested in reporting data to Eurojust might be considered rather useless under current legal framework allowing Eurojust to store personal data for only as long as is necessary for the achievement of its objectives and destroy those data otherwise. Further concerns and practical obstacles result from the broad rights of a data subject (e.g. right of access to personal data) which does not take into account nature of the criminal procedure.

Beyond the specific remarks above, we would like to share our view on how the exchange of information on investigations between Eurojust and Member States might be effectively ensured. It is a different concept based on the experience gained in the field of exchange of information on criminal records within the EU. In this field we succeeded to interconnect the criminal records databases of the Member States. We believe that also national databases/registers of investigations could be interconnected in a similar way and that it would mean a real contribution in practice. We consider it much more effective way to ensure access to relevant information (and reveal links between cases) and would like to encourage discussion on this topic between Member States.

France

Further to the comments submitted in our note dated 21 October 2013 and more specifically in relation to the structure of Eurojust, the French authorities wish to state that, generally speaking, we have no reservations of principle on the Commission's proposed changes to the structure of Eurojust in order to bring it into line with the rules on the functioning of the European Union agencies, as set out by the European Parliament, the Council of the EU and the European Commission in their Common Approach on decentralised agencies.

However, we will seek to ensure that the distribution of competences between the entities concerned (the Administrative Director, the Executive Board, and the College in its administrative and its operational configurations):

- is clarified, so that the aim of lightening the administrative load of the College is in fact achieved and so that the creation of a new body (the Executive Board) does not make the decision-making procedure more cumbersome;
- maintains the specificity of Eurojust's missions, namely to meet the needs of the Member State authorities responsible for investigations and prosecutions;

- guarantees the independence of Eurojust vis-à-vis the European institutions, in particular in determining its strategic objectives and in carrying out its operational tasks.

More specifically, we wish to make the following comments on Articles 9 to 26 of the proposal for a Eurojust Regulation.

Article 10 - Composition of the College

In point **(b)** of **paragraph 1** on the composition of the College in its "administrative configuration", we wonder why the Commission has provided for two representatives, and thus two votes, in view of the voting rules laid down in Article 13. The simple reference to the EU agencies' common rules does not address this satisfactorily and does not demonstrate the need to provide for such imbalanced representation.

Article 15 - Annual and multi-annual programming

- In **paragraph 1**, we do not want the Commission's opinion to be binding on the College when adopting the programming document. The opinion should be advisory only. It may also be appropriate to provide for consultation of the Council, insofar as the annual and multi-annual programming affects the scope of the assistance that Eurojust may provide to the competent authorities of the Member States.

- We believe that it would be more logical for the multi-annual programming, which appears in **paragraph 4**, to be addressed before the annual programming (paragraphs 2 and 3).

We believe that it could be appropriate to set the duration of the multi-annual programming, and to provide for the same duration in the Europol Regulation.

Article 16 - Functioning of the Executive Board

We believe that powers of the Executive Board need further clarification, particularly with regard to responsibilities shared with the Administrative Director and the College. This clarification is necessary so that the aim of lightening the administrative load of the College is in fact achieved and so that the creation of the Executive Board does not make the decision-making procedure more cumbersome.

In particular, points **(f)** and **(g)** of **paragraph 2**, as well as the procedure for drawing up Eurojust's annual and multi-annual programming (Article 15 of the draft Regulation) should be made clearer: are the changes that the Executive Board makes to drafts submitted by the Administrative Director binding on the latter? In that case, how do the Executive Board's prerogatives relate to the independence conferred on the Administrative Director by Article 18(2), and to the autonomous powers attributed to the Administrative Director by other provisions in the draft Regulation (for example, with regard to annual programming, the Administrative Director may make non-substantial amendments to the annual work programme without reference to the Executive Board: Article 15(3))?

Similarly, the position of the Executive Board in relation to the Administrative Director in point (f) (assistance and advice to the Administrative Director) should be made clearer: is this assistance role compatible with the objective of reinforcing supervision of administrative and budgetary management, which implies a monitoring relationship and thus a position of authority?

The nature of "Eurojust's internal administrative structures" referred to in point **(e)** of **paragraph 2** should also be made clearer.

Article 17 - Status of the Administrative Director

We have reservations regarding the status of the Administrative Director as laid down in this Article. In effect, the provisions of Article 17 leave the College little room for manoeuvre as regards the powers of the Commission, in terms of the appointment as well as the extension of the term of office or removal from office of the Administrative Director. It would be better for the College to retain its responsibilities in this area, in accordance with Article 29 of the consolidated Eurojust Decision.

Article 18 - Responsibilities of the Administrative Director

- In paragraph **2**, we query the statement that the Administrative Director is "*independent*" "*without prejudice to the powers of the Commission, the College or the Executive Board*". What exactly are the Commission's powers in this area?

- In point **(g)** of **paragraph 4**, we wonder about the power to impose penalties conferred on the Administrative Director, and would therefore like this point to be clarified.

Germany

In light of the negotiations currently underway concerning the formation of a government in Germany, as well as of the continuing coordination domestically among the parties involved, the Federal Republic of Germany upholds its general scrutiny reservation regarding the full draft regulation. Germany submits the following opinion:

I. Further procedure

As a matter of principle, Germany welcomes the suggestion made by several Member States to not discuss the draft regulation article by article, and instead to discuss it according to the various topics addressed. However, Germany suggests that the discussion of the proposed regulation based on articles begun at the COPEN meeting of 19 September 2013 initially be brought to a close in order to ensure that as complete as possible an understanding of the Member States' opinions is gained in this round of negotiations.

II. General remarks on the application of the "Common Approach on EU decentralised agencies" to Eurojust

The regulation serves to modify the legal nature of Eurojust, changing it from a department to become an EU agency. For such EU agencies, the Commission, the Council, and the European Parliament have resolved on the "Common Approach on EU decentralised agencies," which sets out abstract model rules for the organisation and structure of EU agencies. At the COPEN meeting of November 2013, the Commission repeatedly cited the Common Approach as the rationale underpinning its proposal to restructure Eurojust. However, Germany regards this matter to require a differentiated perspective. The particularities of Eurojust must be respected when discussing the application of the "Common Approach" model: Thus, Eurojust has a special role among the other EU agencies simply due to its **"hybrid" structure**, consisting as it does both of EU staff and of representatives of the Member States. Moreover, Eurojust is a service unit for the national investigating and prosecuting authorities (see Article 85 paragraph 1, first sentence of the TFEU). Modelling Eurojust such that it is equivalent to other EU agencies does not take due consideration of the special tasks that Eurojust is to perform, nor does it account for the needs of the authorities actually pursuing investigation and prosecution tasks in the Member States.

III. Opinion regarding Articles 9 through 26

Article 10

As regards the composition of the College in exercising its management functions (Article 14), Article 10 paragraph 1 lit. b) provides for the obligatory involvement of two representatives of the Commission. As a result, and as opposed to the provision in place thus far (Article 11 of Council Decision 2009/426/JHA), the Commission would be granted means of influencing the design of Eurojust's annual and multi-annual programming (Article 15) in particular, which programming also addresses Eurojust's operative activities. Germany takes the opinion that in light of Eurojust's position and the tasks it must perform, modifying its structure in this way is not appropriate. There is the risk that the national investigating and prosecuting authorities, who perceive Eurojust as an independent judicial authority, will not accept such a modification.

Accordingly, Germany would suggest that Article 10 paragraph 1 lit. b be modified to become a separate paragraph and that it be worded as follows:

"(1a) Where the College exercises its management functions under Article 14, up to two representatives of the Commission may be invited by the College to attend a session of same. In such event, the Commission shall have the right to vote."

10(2)

It is suggested that the wording of paragraph 2, first sentence, second half-sentence "renewable once" be modified. It **does not seem appropriate to restrict the re-appointment of a national member to no more than a single term**. In order to allow Eurojust to benefit in the best possible way from the expertise and experience that a national member will gain in the course of his activities for Eurojust, it should be left to the decision of the Member States whether or not to appoint the national member also for multiple terms. This will also smoothly tie in the provisions regarding the election of the President and Vice-President of Eurojust as set out in Article 11 of the draft regulation, while ensuring that national members who have been active in Eurojust for a long time and have gathered the corresponding experience have the opportunity to stand for election as President and Vice-President.

<u>10(4)</u>

Germany would prefer paragraph 4 <u>to be deleted</u> in its entirety, as the need to include this provision is not recognisable, nor any benefits it might entail, all the more so as it is not known which group of persons specifically is to be admitted to the College meetings.

<u>If the provision is not to be deleted, the following aspects would have to be put in more specific terms in order to address concerns of data protection legislation and operational issues:</u>

- Definition of the group of people who may be invited to attend;
- Determination of the pre-requisites under which these observers may attend the meetings;
- Unanimous decision by the College, based on operational considerations (protection of national interests in investigating and prosecuting crimes), on the "invitations" to be issued to third parties; under certain circumstances, creation of a veto right for the national members for the cases that are discussed at the respective College meetings.

<u>Accordingly, the provision might be worded as follows:</u>

> "(4) Notwithstanding the stipulations made in paragraph 1a hereof, the College may invite any persons as observers whose presence is required in order for Eurojust to perform its tasks. The invitation shall be valid in each case only for one specific meeting of the College and the decision to extend it shall require a unanimous vote by the College. The persons so invited are to be subjected to confidentiality obligations."

Reasons: The current Article 10 paragraph 4, which allows an indeterminate group of people to be allowed access to meetings of the College as observers, gives rise to two concerns:

On the one hand, any meeting at which the College exercises its operational functions (paragraph 1 lit. a) may also see information being exchanged about specific cases, meaning that personal data may also be exchanged among attendees. In order to comply with the requirements as to the protection of personal data under data privacy laws, the circle of persons admitted to the meetings of the College must be restricted to persons whose specific tasks require their attendance.
On the other hand, the national investigating and prosecuting authorities must be able to trust that their cases and data are not reported to persons who are not subject to any confidentiality obligations, all the more so as such cases are often highly sensitive where they concern serious cross-border crimes. Any breach of this trust is suited to jeopardise investigations under criminal law.

10(5)

The concerns regarding paragraph 5 are similar to those harboured regarding paragraph 4. The group of persons covered by the provision needs to be defined, and pre-requisites need to be established under which they shall be permitted to participate in the meetings. Additionally, clear procedural rules need to be created. Simply stating generally that the "provisions of its Rules of Procedure" shall govern is not deemed sufficient. As a consequence of this revision, however, paragraph 5 will no longer address any content going above and beyond the substance of paragraph 4. **Accordingly, Germany would advocate deleting paragraph 5 without substitution**.

Article12(3)

Prior to any in-depth discussion of the **entitlement of a future European Public Prosecutor to participate in** the meetings of the College, the results of the negotiations regarding the institution of the Office of the European Public Prosecutor should be awaited. However, it is already clear at this time that for reasons of data privacy law and for operational reasons, any entitlement of the European Public Prosecutor to participate in meetings of the Eurojust College cannot depend solely on whether or not the European Public Prosecutor considers the questions being discussed to be "of relevance for the functioning" of the European Public Prosecutor's Office. On the contrary: Any presence of the European Public Prosecutor must be necessary for the work done by Eurojust, before all else. Since not all Member States participating in Eurojust will be forming part of the Office of the European Public Prosecutor, it will be necessary to establish clear rules for the exchange of data between Eurojust and said Office. Moreover, Eurojust must be in a position to refuse to allow the European Public Prosecutor to attend should this be required for operational reasons. In light of the short period of time allowed for preparing the present statement of position, it is not possible to submit any specific wording for a revised provision. However, Germany will be happy to contribute to working out constructive solutions.

Article14

The decisions on **major management functions** (Article 14 paragraph 1 lits. d, e, and g, as well as paragraphs 2 and 3) should not be passed by a simple majority, they should be passed by a majority of two thirds of the College.

<u>Article15 paragraph 3, third sentence</u>

The provision made in Article 15 paragraph 3, third sentence (**delegation** to the Administrative Director of **the power to make non-substantial amendments to the annual work programme**), should be deleted. The term "non-substantial amendments" lacks precision. The newly formed Executive Board will already be relieving the College of its administrative tasks. Accordingly, providing for an additional transfer of tasks to the Administrative Director would not seem necessary.

Article16

<u>16(2)</u>

The **competencies allocated to the Executive Board** in <u>lits. b and e</u> will need to be substantially revised:

(1.) In spite of the first exchange of views at the COPEN meeting of November 2013, it is still not possible to obtain a clear understanding of the substance and scope of Article 16 paragraph 2 **lit. b**. **For this reason, Germany would advocate that this provision be deleted. If the provision is not to be deleted, this provision, intended as it is to allocate responsibilities, must be put in more precise terms as regards its substance, and must be delimited more exactly.** At present, we are unable to submit any proposals for rewording the provision as it is not recognisable at present which tasks and circumstances the provision is intended to cover.

(2.) In spite of the first exchange of views at the COPEN meeting of November 2013, it is still not possible to obtain a clear understanding of the substance and scope of Article 16 paragraph 2 **lit. e**. The way this provision is worded gives rise to the concern that the Executive Board may be made responsible for tasks that, at a minimum, must be the task of the College, and perhaps even of the Council and of the European Parliament (Article 85 of the TFEU). **For this reason, Germany would advocate that this provision be deleted. If the provision is not to be deleted, this provision, intended as it is to allocate responsibilities, must be put in more precise terms as regards its substance, and must be delimited more exactly.** At present, we are unable to submit any proposals for rewording the provision as it is not recognisable at present what tasks and circumstances the provision is intended to cover.

(3.) The provision made in Article 16 paragraph 2 **lit. g** does not seem to be appropriate for achieving the result intended. As a matter of principle, the College should be responsible for all essential questions concerning Eurojust; the Executive Board should have such responsibility only in exceptional cases. It is important to provide clearly for the fundamental responsibilities of the College in order to take due account of the structure of Eurojust's tasks.

For this reason, Germany would suggest that Article 16 paragraph 2 lit. g be re-worded as follows:

"g) take on individual management tasks which were transferred to it by the College, the corresponding resolutions having been passed by a majority of two thirds in each case, and for which the Administrative Director is not responsible in accordance with Article 18."

(4.) Article 16 paragraph 2 **lit. h** should be amended in order to prevent questions with a view to Article 14 paragraph 1 lit. l, such amendment putting the intended effect of the provision into more specific terms: "adopt rules of procedure **for its work as Executive Board**."

a. Re. paragraph 3

The provision regarding urgent decisions **must be put in more precise terms**. The pre-requisites based on which an action may be "necessary, because of urgency," are not recognisable. Furthermore, it must be discussed which administrative and budget matters are to be covered, and what the phrase "certain provisional decisions on behalf of the College" is intended to designate. Moreover, the period must be determined within which the confirmation from the College is to be obtained and which consequences ensue should the College not so confirm these decisions.

Should it not be possible to clear up these issues as required, paragraph 3 is to be deleted in its entirety, since its application would otherwise give rise to significant legal and practical problems.

16(4)

The **composition of the Executive Board** requires further discussion. The Board should pass its decisions by a majority of two thirds. The question is whether the participation of the European Commission in the Board, with comprehensive voting rights, is consistent with the nature of Eurojust as a service unit for the national investigating and prosecuting authorities. From the German perspective, it would also be appropriate and sufficient if the European Commission were to attend as an observer. Furthermore, the procedure needs to be addressed according to which the member of the College is to be appointed that will serve on the Executive Board along with the President and the Vice-President.

16 (7) and (8)

Paragraphs 7 and 8 (**right of the European Public Prosecutor to participate and to submit written opinions**) require further revisions in terms of their substance and wording. At present it is not recognisable why it should be necessary for the European Public Prosecutor to attend the meetings of the Executive Board. Likewise, it is not apparent from the current wording of paragraph 8 what is to be understood by "written opinions", what topics such opinions are to address, and whether they shall have binding effect on Eurojust. Germany will be happy to contribute to wording a new text once the circumstances have been established that the provision is to cover.

Article 17

17(2)

The **list** that is to serve as the basis for selecting the Administrative Director should not be prepared by the European Commission; instead, it should be prepared by **the Executive Board**. This is in keeping with the Executive Board's task of preparing resolutions to be passed by the College (Article 16 paragraph 2 lit. a in conjunction with Article 14 paragraph 4 of the draft resolution). As a member of the Executive Board, the European Commission would be involved in the preparation of the list.

Moreover, clear provisions must be made as regards the minimum number of candidates, and the criteria based on which they are to be selected. The wording "open and transparent selection procedure" is too indeterminate in this regard. Furthermore, provisions must be made as to whether candidates who have not been selected may be granted opportunities of seeking relief against the corresponding decision, and if so, what relief will be available to them.

17(3) first sentence

As has been provided for in the "Common Approach on EU decentralised agencies," the term of the Administrative Director should be limited to four years, with the option of renewing this term (of four years) once.

17(3), second sentence, paragraph 4 and paragraph 7

The Executive Board should be the body evaluating the performance of the Administrative Director and proposing the extension of his term of office, see above.

Article18 paragraph 4

The **competencies and responsibilities of the Administrative Director**, the College and the Executive Board are to be clearly delineated from one another and are to be described in exact terms. For this purpose, the text will need to be further revised; Germany will be happy to contribute in this regard.

In paragraph 4 **lit. c**, the words "after consultation with the Commission" should be deleted. Any influence by the European Commission on the operational programme, on which the College resolves by a majority of two thirds of the votes cast (Article 14 paragraph 1 lit. a), does not seem appropriate.

Article19 paragraph 3 (On-call Coordination)

Paragraph 3 should be amended by the half-sentence set out in Article 5a paragraph 3, third sentence, of the currently applicable Council Decision setting up Eurojust, as to the "execution" of requests received by the OCC being handled (solely) "through the exercise of powers available to them and referred to in Article…"

Article 21 paragraph 5 (Extension of obligation to provide information)

Germany emphatically objects to the planned extension of the obligations to provide information. Contrary to what has been provided for in Council Decision 2009/426/JHA, the draft regulation now proposed by the European Commission seems intended to abolish those criteria in place thus far that limited the information obligation (in accordance with the list of offences set out in Article 13 paragraph 6 lit. a, or if indications of a criminal organisation or of cross-border crimes are given). There is no evidence of any need existing in terms of the substance of the matter, nor can such need be inferred from the results obtained by the sixth round of evaluations of the GENVAL Council Working Party. The applicable law ensures that Eurojust is informed of all cases of serious cross-border crimes. However, the evaluation reports of the sixth round of GENVAL evaluations have shown that in many Member States the currently applicable obligations to provide information already meet with certain acceptance issues in those states' legal practice. Inasmuch, any (repeated) extension of the information obligations may be suited to lastingly damage the acceptance of Eurojust with legal practitioners. As a consequence, the objective intended by the regulation, namely: to make the work done by Eurojust more effective, would not be achieved. This will apply in particular where, in the view of the national investigating and prosecuting authorities, wide-ranging information obligations do not provide for any direct benefits for the authorities' own work. Germany has already submitted these concerns when Article 21 of the draft resolution was worded.

In the interests of effectively investigating and prosecuting cross-border criminal offences, the legal framework for Eurojust is to be designed carefully and with moderation; any extension of the information obligations should be forgone.

Additionally, there is the risk that not all Member States will agree to the Eurojust regulation. As a result, the Member States may collaborate with Eurojust on "two levels": on the one hand on the basis of the Eurojust regulation, and on the other on the basis of the Eurojust Decision of 2008. It will be very difficult to explain why the Member States working on the basis of the Eurojust regulation must provide more information to Eurojust than those Member States who are working on the basis of the Eurojust Decision, while in the end, however, all Member States will be allowed to work with the data collected by Eurojust in the same manner. Accordingly, a balance must be struck between the legal obligations to which the Member States are subject.

Article 24 paragraph 7 and 8

The provisions seem too far-reaching, while there are also concerns under data privacy law and as regards operational aspects. The European Public Prosecutor is not the same as Eurojust, as discussed above. Any regulations granting the European Public Prosecutor access to data that the Member States have transmitted to Eurojust, and allowing the European Public Prosecutor to use such data, must therefore make clear stipulations as to the occasion on which the European Public Prosecutor is granted such access and is allowed to use such Eurojust data, as to the pre-requisites applying thereto, and as to the scope in which this is allowed.

Germany will be happy to make a contribution towards wording a text as soon as more detailed information is available regarding the intentions pursued by the proposal made by the Commission.

Article 25 paragraph 1, first sentence (Functioning of temporary work files and the index)

The term "or other applicable legal instruments" lacks in specificity; this provision needs to be revised. Germany will be happy to make a contribution towards wording a text as soon as more detailed information is available regarding the intentions pursued by the proposal made by the Commission.

Hungary

Article 14

Article 14 contains a list of functions of the College. However, this list is not exhaustive, as a number of other competences are set out under other Articles of the Proposal, such as: delivering an opinion on Eurojust final accounts (Article 51(6)); adoption of rules on the secondment of national experts on Eurojust (Article 54(2)2); adoption of rules implementing Regulation 1049/2001 (Article 60(2)).

The Hungarian delegation suggests that the previously mentioned functions be included in the list in Article 14.

Article 14 para 1 lit c

According to Article 14(1)(c)), the College in its management functions shall adopt a *"consolidated annual activity report on Eurojust's activities*"; Article 18(4)(e) provides that the Administrative Director shall be responsible for preparing the "*annual report on Eurojust's activities*"; Article 55(1) mentions an Annual Report , and Article 51(2) mentions a "*report on the budgetary and financial management*".

In the light of the above listed reports the Hungarian delegation suggests the exact content of the "consolidated" annual activity report need to be clarified.

Article 14 (1)(g)

The Hungarian delegation suggests the description “Agency” be changed to Eurojust.

Article 14 (1)(i)

There are contradicting provisions regarding the appointment of the Data Protection Officer: according to Article 14(1)(i), the Data Protection Officer is to be appointed by the College whereas, according to Article 31(1), the Data Protection Officer shall be appointed by the Executive Board.

The Hungarian delegation suggests this contradiction be resolved.

Article 14 (2)

The detailed references of the Staff Regulations are not necessarily vital in the text of the proposal, therefore the Hungarian delegation suggests a general reference be applied. The same applies in case of Article 16 para 3 lit c.

Article 15 para 1

Strategic programming at Eurojust is set to include objectives that relate not only to administrative matters but also to operational ones, and priorities relating to the so-called ‘horizontal work’ of Eurojust.

With regard to operational matters, it is questionable whether it is appropriate to entrust strategic guidance in this area to the College in its management functions and to empower the Commission to potentially influence the nature and the focus of the operational work of Eurojust.

In the lights of the circumstances, the Hungarian delegation suggests establishing further details/regulations regarding the strategic programming.

Article 15 para 3

The Hungarian delegation suggests the description “Agency” be changed to Eurojust.

Article 16 para 2 lit c

According to this article the Executive Board shall adopt implementing rules to the Staff Regulations. Such decision-making powers are consistent with the responsibilities of the Administrative Director in the area of staff management and in the opinion of the Hungarian delegation, should therefore remain with him, which is consistent with the current regime in accordance with the Eurojust Decision.

Article 17 para 2

Although the rules established by the article are compliant with the Common Approach, they do not seem to be appropriate for Eurojust. According to the proposal, the European Commission has an exclusive right to propose the list of candidates from which the Administrative Director is to be appointed.

As per the current procedure laid down under Article 29 of the Eurojust Decision, the selection board would be setup by the College, with the Commission retaining its entitlement to participate in the selection process and to sit in the selection board.

The Hungarian delegation suggests the current appointing system be upheld.

Articles 24-26

The Case Management System is further detailed in the rules of procedures, therefore, in the opinion of the Hungarian delegation, it is not necessary for the proposal to contain more defined provisions regarding the Case Management System.

Article 24 para 7

According to the provisions, the Case Management System and its temporary work files shall be made available for use by the EPPO. The Hungarian delegation has concerns regarding the applicable data protection rules: the transfer of the data will be regulated only by the data protection rules of the EU therefore the stricter safeguards set by national regulations may not be applicable.

SWEDEN

GENERAL REMARKS CONCERNIG 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.

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.

Chapter III

When forming the chapter on operational matters, it is of great value to take part of the results of GENVAL's sixth round of mutual evaluations. Even if we do not have the results of the final outcome of the evaluation, we believe that there could be reasons to revise the provisions under this chapter. This conclusion is particularly relevant for the provisions concerning the on-call coordination system (article 19) and exchange of information with the Member States and between national members (article 21). The possibility to reduce the Member States' obligations outlined in the provisions is one question that we believe should be considered during the recommended thematic discussions.

Article 10 Paragraph 1 a)–b)

With regard to article 5, and considering the rest of the proposal, it appears that the College can act in other situations than those described in article 10 paragraph 1 a)–b). We therefore believe that the demarcation between operational functions (article 4) and management functions (article 14) needs further clarification. For example, which category does a request on access to personal data (article 32) and posting of liaison magistrates (article 46) fall under? It is important to explain what the composition of the College should be in these situations. Sweden believes that as a main principle, the College should be composed by the national members unless the matter concerns management in accordance with article 14. This should be clarified by amending article 10 paragraph 1 a) as follows:

"a) all the national members when the College exercises its operational functions under Articles 4 and 5;"

The proposal to give the Commission two representatives in the College when it exercises its management functions needs further explaining and analysis. There is a risk that this creates a credibility problem in relation to the national authorities in the Member States who rely on the independence of Eurojust. According to the proposal, the Commission's representation in the College would be limited to management functions but since it is difficult to make a clear distinction between operational and management functions, we still believe that there might be a risk for negative repercussions.

The Commission's proposal is in this regard based on the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies. Sweden believes that the specificities of Eurojust and its tasks must be considered further before deciding that the Joint Statement on decentralised agencies provides for an appropriate model for Eurojust.

Article 13(2)

The possibility for the assistants to vote on behalf to the national members should be mentioned. This competence could be derived from article 7 paragraph 4 but a clarification could nevertheless be useful.

Article 17(7)

Sweden questions that the dismissal of the Administrative Director has to be preceded by a proposal on this from the Commission. The current procedure as outlined in article 29 in the Council Decision on Eurojust is well functioning and should therefore be maintained.

UK

Article 9

This Article looks similar to the current measure and access to registers noted in accordance with national law. But what about MS where national law differs due to there being multiple Jurisdictions.

Article 11

- We are concerned that the proposed arrangement would place excessive burdens on the President and vice Presidents if they are to be involved in the proposed Executive Board under Article 16 (4), the college and their other functions. This is another arguement for our support for the creation of a Management Board.

Article 12

- The draft Regulation foresees potentially only two meetings of the College in its management formation. We believe this does not accord enough time for management issues properly to be considered. Again, this is a further argument for why we support the creation of a Management Board.

- We do not believe it is appropriate for any EPPO to automatically receive agendas of Eurojust's management body. We believe that any cross-references to the EPPO should be revisited once the position on the EPPO file becomes clearer.

Article 13

Again, we believe this should be considered as part of a thematic discussion.

Article 14

In line with our comments above, we believe that this Article should be considered as part of a thematic discussion on governance. We are concerned that the College risks becoming a rubber stamp body when exercising it management functions.

Article 15

The Presidency is aware from our submitted comments that the UK prefers an external Management Board and based on the outcome, we believe that this Article would need to be revisited to reflect the role of a Management Board.

Article 16

- We agree that there is a need to reduce bureaucratic burden for National Members as they should concentrate on core operational functions. The proposed Executive Board would substantially increase the burden of the President and Vice Presidents and risk turning the college into a rubber stamp body when exercising its management functions. We are also concerned about concentrating decision making in a small group.

- The UK believes that there should be an external Management Board consist of representatives with relevant managerial, administrative and budgetary skills from all Member States and would enable Member States to take an active role in strategic and management decisions of the Agency, whilst freeing up National Members to concentrate on casework.

- It would be helpful to know what kinds of "written opinions" the Commission foresee the EPP sending the Executive Board under Article 16(8).

Article 17

We need to rethink the role of the Administrative Director again as part of a thematic discussion and consideration of an external Management Board.

Article 18

The Administrative Director could be accountable to the external Management Board.

Article 19

Please see our comments above that any decision to retain the OCC within the Regulation should be informed by the ongoing peer evaluation process. At this time we question the need for this text within the Regulation. Moreover, in respect of Article 19(3) we believe that this is a matter for Member States to determine and should not be regulated in a Regulation.

Article 20

We do not have a substantive comment at the moment.

Article 21

Exchanges of information with the Member States and between national members

- We need clarification of the interface between (1) and (3). Also, we note that "shall" is used throughout this article, we suggest changing it to "may". This will give flexibility and some discretion to MS.
- Also, 21 (9) gives Eurojust powers to decide *how* information is transmitted. The text in the current measure is better because it leaves MS to decide on how information is transmitted to Eurojust.
- We should maintain the current wording in current 13 (11). We have different criminal justice systems and practical and operational discrepancies between MS, so it is difficult for Eurojust to establish how information is transmitted in a structured way. A one-size-fits-all approach is too inflexible.

Article 21 (9) Suggested changes to the text.

9. ~~Information referred to in this Article shall be provided in a structured way as established by Eurojust.~~ ***Information referred to in this Article shall be transmitted to Eurojust in a structured way.***

Article 22

We note the new addition in Article 22(1) of "may include personal data". Why is it necessary to add this text?

Article 23

- Please see our previous comments on Article 4, the main concern is that the right to refuse and reasons for doing so are then buried this Article 23.

- We have suggested that Article 23 should instead be Article 4(3) to ensure transparency and clarity for MSs and the authorities who will have to use this text.

Article 24

- The UK believes that 24 (7) & (8) can only be settled once the structure and responsibilities of the EPPO have been fully established.

- We also have to clarify what impact this will have for Member States who do not participate in the EPPO.