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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

No. prev. doc.: 8688/18, 7693/18, 6662/18

Subject: Draft Council Implementing Decision approving the conclusion by Eurojust of the Agreement on Cooperation between Eurojust and Albania
- Adoption by the Council

1. Article 26(2) of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view of reinforcing the fight against serious crime¹, provides that Eurojust's cooperation agreements and working arrangements "*may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers to Eurojust. Such agreements or working arrangements may only be concluded after consultation by Eurojust with the Joint Supervisory Body concerning the provisions on data protection and after the approval by the Council, acting by qualified majority*".
2. By letter dated 12 July 2016, the President of Eurojust informed the Council about Eurojust's intention to launch formal negotiations with a view to concluding an Agreement on Cooperation with Albania.

¹ OJ L 63, 6.3.2002, p. 1.

3. By letter dated 16 October 2017 the President of Eurojust transmitted, in accordance with Article 26(2) of the Council Decision 2002/187/JHA, the draft Agreement on Cooperation between Eurojust and Albania, as endorsed by the College at its meeting on 19 September 2017, to the Council for approval, along with the opinion of the Joint Supervisory Body (JSB) of 17 July 2017 (as set out in doc 6662/18).
4. On 26 March 2018 the aforementioned draft Agreement on Cooperation, as set out in doc 6662/18, was presented to the JAIEX. On 25 April 2018 the draft Council Implementing Decision approving the conclusion of this Agreement on Cooperation, as set out in doc 7693/18, was also presented to JAIEX.
5. Following agreement in JAIEX, the text of the draft Council Implementing Decision approving the conclusion of the Agreement on Cooperation between Eurojust and Albania has undergone lawyer-linguist revision. The revised version is set out in doc 8688/18.
6. In line with the judgment of the Court of Justice of the European Union of 16 April 2015 in Case C-540/13, where it ruled that the Council should have consulted the European Parliament before adopting Council Decision 2013/392/EU fixing the date of effect of the VIS Decision, as stipulated by Article 39(1) of the former Treaty on European Union² even in cases where the relevant provision of the basic act - like Article 26(2) of Council Decision 2002/187/JHA - does not explicitly provide so³, the European Parliament should be consulted on the basis of Article 39(1) of the former Treaty on European Union on Council Implementing Decisions, regarding the conclusion of Eurojust's cooperation agreements and working arrangements with Union' institutions, bodies and agencies.

² For more information on this case, see 8541/15 and 9599/15.

³ See paragraphs 37 to 40 and 53 to 57 of Case C-540/13.

7. The European Parliament delivered its positive opinion on 13 September 2018.
 8. On this basis, the Permanent Representatives Committee is invited to submit the draft Council Implementing Decision approving the conclusion by the Eurojust of the Agreement on Cooperation between Eurojust and Albania, as set out in 8688/18, to the Council, and to suggest that it adopts this Council Implementing Decision.
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