



Brussels, 28 March 2019
(OR. en)

7897/19

Interinstitutional File:
2019/0805(CNS)

JAIEX 51
COPEN 132
EUROJUST 60

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	7783/19
Subject:	Agreement on Criminal Justice Cooperation between Eurojust and the Kingdom of Denmark

At the meeting on 26 March 2019, JHA Counsellors examined the draft Agreement on Criminal Justice Cooperation between Eurojust and the Kingdom of Denmark. No substantial comments were presented. The Presidency concluded that the Member States approve the draft Agreement.

With a view to the consultation of the European Parliament, the following documents are submitted:

- 1) the draft Agreement on Criminal Justice Cooperation between Eurojust and the Kingdom of Denmark, as approved by Eurojust and the Danish government ([Annex I](#));
- 2) an annex to this Agreement, concerning the contribution of Denmark to the revenue of Eurojust ([Annex II](#));¹
- 3) a letter of the President of Eurojust, dated 21 March 2019, stating that the college of Eurojust approved the draft Agreement on that same day ([Annex III](#));

¹ Please note that in this text two minor errors were corrected, compared to the text set out in 7783/19:
a) in point 1, first line, the reference to Article 25 has been modified in a reference to Article 26;
b) in point 5, last line, the reference to 'the budget of year N+1 of the Commission' has been modified into 'the budget of year N+1 of Eurojust'.

- 4) the (positive) opinion of the Joint Supervisory Body, dated 28 March 2019, regarding the provisions relating to data protection (Annex IV).
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Draft Agreement on Criminal Justice Cooperation between Eurojust and the Kingdom of Denmark



Draft Agreement on Criminal Justice Cooperation between Eurojust and the Kingdom of Denmark

Eurojust and the Kingdom of Denmark (hereinafter referred to as the ‘Parties’),

1. 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 thereof²;
2. Having regard to the opinion of the Joint Supervisory Body, as established by Article 23 of the Eurojust Decision, of ---;
3. Considering that as of 12 December 2019, Regulation (EU) 2018/1727³ (hereinafter referred to as the "Eurojust Regulation") will apply and that, as a consequence both of the application of Protocol (No 22) on the position of Denmark (hereinafter referred to as "Protocol 22") under which the Kingdom of Denmark (hereinafter referred to as "Denmark") does not take part in the adoption of measures pursuant to Title V of Part Three of the TFEU and that such measures are not binding upon nor applicable in Denmark; and of the fact that Denmark has so far not exercised the option provided for in Part IV of the said Protocol which would allow it to fully participate in the new Eurojust Regulation, Denmark will no longer be part of Eurojust to which it has participated since Eurojust's establishment in 2002 and will be regarded as a third country with respect to Eurojust;
4. Considering the interest of both Parties to establish close and dynamic cooperation to meet the present and future challenges posed by serious crime, particularly organised crime and terrorism, and to facilitate the coordination of investigations and prosecutions covering the territory of Denmark and one or more of the other Member States of the European Union;
5. Considering that Denmark is a Member State of the European Union;

² OJ L 63, 6.3.2002, p.1.

³ OJ L 295, 21.11.2018, p. 138.

6. Considering that Denmark participates in Union acts in the field of judicial cooperation in criminal matters adopted on the basis of ex-Title VI of the Treaty on European Union before the entry into force of the Treaty of Lisbon, such as Council Framework Decision 2002/584/JHA on the European Arrest Warrant⁴, Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States⁵, and Council Framework Decision 2002/465/JHA on Joint Investigation Teams⁶;
7. Considering that Denmark implements fully in its national law, in accordance with Article 4 of Protocol 22, the Schengen *acquis*, and is therefore bound under international law by a number of EU law enforcement provisions and measures in the field of judicial cooperation in criminal matters, including the measures aimed at compensating the absence of internal border controls on persons within the Schengen area;
8. Considering that Denmark is also part of the Nordic passport union together with the other Nordic States, two of which are EU Member States and two of which are associated with the implementation of the Schengen *acquis* and its further development;
9. Considering that Denmark and Eurojust wish to conclude an agreement at a level at least equivalent to that of third countries that have concluded a cooperation agreement with Eurojust;
10. Considering that the College of Eurojust decided to conclude a cooperation agreement with Denmark on 22 November 2018;
11. Considering that the President of Eurojust informed the Council of the European Union by letter of 28 February 2019 that Eurojust envisages launching formal negotiations with the intention of entering into a cooperation agreement with Denmark;
12. Considering that on 12 March 2019, the Council of the European Union took note of Eurojust's plans to start formal negotiations with a view to entering into a cooperation agreement with Denmark in accordance with Article 26a(2) of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust;
13. Considering that the Council of the European Union, having regard to the opinion of the European Parliament, has on XXX, approved the conclusion by Eurojust of this Agreement;
14. Considering that because of the above-mentioned specific situation of Denmark, both as an EU and a Schengen Member State, it is appropriate to provide in the present Agreement, in addition to the provisions usually provided for in cooperation agreements with third countries, a wider participation of the Representative in meetings of the College than for Liaison Prosecutors of third countries, since Denmark is also affected by strategic and operational issues discussed in the College which affect all Member States of the European Union;

⁴ OJ L 190, 18.07.2002, p. 1.

⁵ OJ L 93, 7.4.2009, p. 23.

⁶ OJ L 162, 20.6.2002, p. 1.

15. Considering that, for the same reason, it is appropriate that the national Parliament of Denmark is informed on Eurojust's annual report, as well as on the results of studies and strategic projects commissioned by Eurojust, its strategic programming documents and working arrangements concluded with third parties in the same way as the national Parliaments of the other Member States are in line with Article 67 of the Eurojust Regulation;

16. Considering that in order to secure the uniform application and interpretation of this Agreement, it is appropriate to provide that the Court of Justice of the European Union will have jurisdiction as regards questions on the validity and interpretation of this Agreement raised by Danish courts or tribunals and as regards compliance by Denmark with the Agreement, as well as with regard to personal data protection and Eurojust's liability;

17. Considering likewise that it is appropriate to provide that the data protection provisions of this Agreement comprise an obligation for Denmark to apply Directive 2016/680⁷ with respect to the personal data exchanged pursuant to this Agreement and to recognise the role of the European Data Protection Supervisor;

18. Considering that this Agreement is conditional upon Denmark's continued membership of the Schengen area, and that if Denmark would no longer be bound by the Schengen acquis, this Agreement would as a consequence be terminated;

19. Considering that Denmark will appropriately contribute financially to Eurojust's budget;

20. Respectful of Denmark's and Eurojust's obligations under the Charter of Fundamental Rights of the European Union;

⁷ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

HAVE AGREED AS FOLLOWS:

Chapter I – General Provisions

Article 1

Definitions

For the purposes of this Agreement:

- a) ‘Eurojust Decision’ means Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust;
- b) ‘Eurojust Regulation’ means Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA;
- c) ‘Member States’ means the Member States of the European Union bound by the Eurojust Regulation;
- d) ‘College’ means the College of Eurojust, as referred to in Article 10 of the Eurojust Regulation;
- e) ‘National Member’ means the National Member seconded to Eurojust by each Member State of the European Union, as referred to in Article 7 of the Eurojust Regulation;
- f) ‘Deputy’ means a person who may act on behalf of or substitute the National Member, as referred to in Article 7 of the Eurojust Regulation;
- g) ‘Assistant’ means a person who may assist a National Member as referred to in Article 7 of the Eurojust Regulation;
- h) ‘Representative to Eurojust’ (hereinafter referred to as ‘the Representative’) means a public prosecutor or a representative of a judicial authority with competences equivalent to those of a public prosecutor under the national law of Denmark;
- i) ‘Deputy to the Representative’ means a public prosecutor or a representative of a judicial authority with competences equivalent to those of a public prosecutor under the national law of Denmark who shall be able to act on behalf of, or substitute the Representative;

- j) ‘Assistant to the Representative’ means a public prosecutor or a representative of a judicial authority with competences equivalent to those of a public prosecutor under the national law of Denmark, who assists the Representative;
- k) ‘Judicial authorities’ for Denmark means courts of general jurisdiction and public prosecutors of all levels;
- l) ‘Administrative Director’ means the Administrative Director as referred to in Article 17 of the Eurojust Regulation;
- m) ‘Data Protection Officer of Eurojust’ means a specially appointed member of the Eurojust staff whose tasks are defined in Article 38 of the Eurojust Regulation, including, particularly, ensuring the lawfulness and compliance of the processing of personal data by Eurojust in an independent manner;
- n) ‘Eurojust staff’ means the staff referred to in Article 65(2) of the Eurojust Regulation;

Article 2

Purpose of this Agreement

The purpose of this Agreement is to establish cooperative relations between Eurojust and Denmark in order to support and strengthen national investigations and prosecutions concerning serious crime affecting two or more Member States, or requiring prosecution on common bases on the basis of operations conducted and information supplied by the Member States’ authorities, by Europol, by the EPPO, and by OLAF in accordance with Article 3 of the Eurojust Regulation.

Article 3

Scope of cooperation

Eurojust and Denmark shall cooperate in the fields of activity set forth in Article 4 in conjunction with Article 5, where relevant, and Article 54 of the Eurojust Regulation. Whenever amendments to the provisions of the Eurojust Regulation are adopted which become applicable in the context of this Agreement, Eurojust shall notify Denmark thereof.

Article 4

Relation to other international instruments

This Agreement shall not prejudice or otherwise affect or impact upon the legal provisions with regard to exchange of information between Denmark and any other Member State of the European Union foreseen by any Mutual Legal Assistance Treaty, any other cooperation agreement or arrangement, or any other Union legal act or agreement concluded by the Union.

Chapter II – Mode of cooperation

Article 5

Competence for the execution of this Agreement

1. The competent authority of Denmark for the execution of this Agreement is the Director of Public Prosecutions of Denmark.
2. Within Eurojust the National Members concerned and the College are competent for the execution of this Agreement.

Article 6

Representative of Denmark to Eurojust

1. To facilitate cooperation as laid down in this Agreement Denmark may second a Representative to Eurojust.
2. The mandate and the duration of secondment shall be determined by Denmark.
3. The Representative may be assisted by a Deputy to the Representative, an Assistant to the Representative and by an Administrative Assistant to the Representative. When necessary, the Deputy or the Assistant may replace the Representative.
4. Denmark shall inform Eurojust of the nature and extent of the judicial powers of the Representative, and of his/her Deputy and Assistant, within its own territory to accomplish his or her tasks in accordance with the purpose of this Agreement. Denmark shall establish the competence of its Representative and of his /her Deputy and Assistant to act in relation to foreign judicial authorities.

5. The Representative, his/her Deputy and Assistant shall have access to the information contained in the national criminal records or in any other register of Denmark in the same way as stipulated by Danish law in the case of a prosecutor or person of equivalent competence.
6. The Representative, as well as his/her Deputy and Assistant may contact the competent authorities of Denmark directly.
7. Eurojust shall provide sufficient facilities to the Representative, and to his/her Deputy, Assistant and Administrative Assistant, which shall include the use of office space and telecommunications services, within the constraints of the infrastructure and budget of Eurojust.
8. The working documents of the Representative, his/her Deputy, Assistant and Administrative Assistant, shall be held inviolable by Eurojust.

Article 7

Participation in meetings

1. When the College exercises its operational functions, the Representative, or his/her Deputy or Assistant, may attend as an observer, without the right to vote. When the College exercises its management functions, the Representative, or his/her Deputy or Assistant, may attend as an observer, without the right to vote, at the invitation of the President of Eurojust.
2. The Representative, his/her Deputy or Assistant, and representatives of other competent authorities of Denmark, may participate in strategic meetings at the invitation of the President of Eurojust and in operational meetings with the approval of the National Members concerned.
3. National Members, their deputies and Assistants, the Administrative Director and Eurojust staff may also attend meetings organised by the Representative, his/her Deputy or Assistant, or other competent authorities of Denmark.

Chapter III – Exchange of information

Article 8

General provisions

1. Exchange of information between the Parties shall only take place for the purpose of and in accordance with the provisions of this Agreement.
2. The Parties shall only supply information to each other which was collected, stored and transferred in accordance with their respective legal framework on data protection referred to in this Agreement and has not been obtained in violation of the Charter of Fundamental Rights of the European Union.

Article 9

Exchange of information

1. In accordance with this Agreement, the Parties may exchange all information that is adequate, relevant and not excessive to achieve the purpose of this Agreement as laid down in Article 2 hereof.
2. The requesting Party shall notify the other Party of the purpose for which the information is requested. In the event 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, as well as a record of their processing operations.

Article 10

Channels of transmission

1. The information shall be exchanged:
 - a) either between the Representative, his/her Deputy and Assistant and the National Members concerned or the College;
 - b) directly between the judicial authority in charge of investigating and/or prosecuting and/or carrying out the criminal proceedings and the National Members concerned or the College. In this event, the Representative 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 protection of personal data processed by each of the Parties pursuant to this Agreement shall be ensured:
 - a) as regards Denmark, by the application of Directive (EU) 2016/680 without prejudice to the specific provisions of this Agreement and,
 - b) as regards Eurojust, by the application of the Eurojust Regulation and Regulation 2018/1725.
3. References to Member States in Articles 39, 42, 43 and 45 of the Eurojust Regulation shall be construed as references including Denmark. The supervision by the EDPS as referred to in Article 40 of the Eurojust Regulation shall also apply to this Agreement.

4. 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 with respect to the respective tasks of the Parties 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 by those authorised to do so 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.
5. The Parties shall provide, as far as possible, for personal data based on facts to be distinguished from personal data based on personal assessments as well as to make a clear distinction between personal data of different categories of data subjects
6. The Parties shall respect any specific conditions for the processing of personal data provided by the other party and undertake to inform any recipient of such personal data of those conditions and the requirement to comply with those.

Article 12

Transmission of special categories of personal data

1. Personal data revealing racial or ethnic origin, political opinions or religious or philosophical beliefs, or trade union membership, or genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation may only be provided if they are strictly necessary for a purpose set forth in Article 2 of this Agreement.
2. The Parties shall ensure that appropriate safeguards for the rights and freedoms of the data subject are put in place, in particular through appropriate technical and organisational security measures, in order to respect the special sensitivity of the categories of personal data mentioned in paragraph 1. Discrimination against natural persons on the basis of such personal data shall be prohibited.

Article 13

Right of access to personal data

1. The data subject is entitled to have access to his or her 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 and without undue delay by any appropriate means, including electronic means, including information for the data subject on the possibility to lodge a complaint with a supervisory authority or to seek a judicial remedy.
2. Where the Party has reasonable doubts as to the identity of the natural person making the request, it may request the provision of additional information necessary to confirm the identity of the data subject.
3. Access to personal data may be restricted, fully or partially, to the extent that such restriction constitutes a necessary and proportionate measure in a democratic society with due regard to the fundamental rights and legitimate interests of the natural person concerned if providing such access may jeopardise:
 - a) official inquiries, investigations or procedures;
 - b) investigations, prosecutions of criminal offences and criminal proceedings conducted by the competent authorities in Denmark or by the competent authorities in the Member States that Eurojust is assisting or the execution of criminal penalties; or
 - c) the rights and freedoms of third parties.
4. 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 restrict, fully or partially, access as set forth in paragraph 1. Such opinion shall take due regard of the fundamental rights and legitimate interests of the person.
5. 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 rectification, erasure and restriction of processing of personal data

1. The data subject shall be entitled to request the Party that has processed data relating to him/her under this Agreement to rectify, erase or restrict the processing of those data that 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 by appropriate means, including electronic means, and shall include all relevant information to substantiate it.
2. The provisions of Article 13, paragraphs 1 to 4, shall apply *mutatis mutandis* to any requests received by the Parties regarding rectification, erasure or restriction of processing of personal data.
3. 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.
4. 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 is made by the other Party of the accuracy of information or the reliability of a source, it shall inform the other Party thereof. The other Party shall, where necessary, notify any further recipient so that they rectify, erase or restrict the processing of such personal data accordingly.

Article 15

Time limits for the storage of personal data

1. Personal data shall be stored only for so long as necessary for the achievement of the purposes of this Agreement or for the purposes for which the data were collected or further processed according to Article 2 of this Agreement.
2. The Parties shall put in place appropriate procedural measures to ensure the periodic review of the need to store personal data and the observance of appropriate time limits for storage.

Article 16

Data security

1. The Parties ensure that the necessary technical and organisational measures 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 particularly ensure that only those authorised to access personal data can have access to such data.
2. The Parties shall integrate the necessary measures into the processing operations to meet the requirements of this Agreement and protect the rights of the data subjects.

Article 17

Onward transfers

The Parties shall not communicate any information provided by the other Party to any third State or body without the prior agreement of the latter and without appropriate safeguards regarding the protection of personal data to ensure that the level of protection guaranteed by this Agreement is not undermined.

Article 18

Liability for unauthorised or incorrect processing of data

1. Eurojust's liability for unauthorised or incorrect processing of data and the right to compensation shall be governed by Article 46 of the Eurojust Regulation, including as regards the jurisdiction of the Court of Justice of the European Union, which Denmark shall recognise.
2. Denmark shall be liable, in accordance with its national law, for any damage caused to an individual which results from the unauthorised or incorrect processing carried out by it of data which were communicated to Eurojust.
3. This article shall be without prejudice to the jurisdiction of the Court of Justice as provided for in Article 22.

Article 19

Regular consultations

1. The Parties shall hold, at least once per year, regular exchanges of views with regard to implementation and further developments in the field of data protection and data security.
2. To that end, the Data Protection Officers of Eurojust and of the Director of Public Prosecution in Denmark will report to each other at least once per year on the compliance with the data protection provisions of this 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 to the competent data protection supervisory authorities in particular.

Chapter IV -

Right to judicial remedy, liability and jurisdiction of the European Court of Justice

Article 20

Right to a judicial remedy against decisions of the EDPS

With regard to actions against the decisions of the European Data Protection Supervisor concerning operational personal data Denmark shall recognise the jurisdiction of the Court of Justice of the European Union provided for in Article 44 of the Eurojust Regulation.

Article 21

Liability and the right to compensation

1. The contractual and non-contractual liability of Eurojust shall be governed by Article 78 of the Eurojust Regulation, including as regards the jurisdiction of the Court of Justice of the European Union which Denmark shall recognise.
2. This article shall be without prejudice to the jurisdiction of the Court of Justice of the European Union as provided for in Article 22.

Article 22

Jurisdiction of the Court of Justice of the European Union in relation to the interpretation of and compliance with of the Agreement

1. Where a question on the validity or interpretation of this Agreement is raised before a Danish court or tribunal, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon whenever under the same circumstances a court or tribunal of another Member State of the European Union would do so in respect of the Eurojust Regulation.
2. Where any such question is raised in a case pending before a Danish court or tribunal against whose decision there is no judicial remedy under national law, the Danish court or tribunal shall bring the matter before the Court of Justice whenever under the same circumstances a court or tribunal of another Member State of the European Union would be required to do so in respect of the Eurojust Regulation.
3. Under Danish law, the courts in Denmark shall, when interpreting this Agreement, take due account of the rulings contained in the case-law of the Court of Justice in respect of provisions of the Eurojust Regulation.
4. Denmark shall be entitled to submit observations to the Court of Justice in cases where a question has been referred to it by a court or tribunal of a Member State for a preliminary ruling concerning the interpretation of any provision of the Eurojust Regulation.
5. The European Commission may bring before the Court of Justice cases against Denmark concerning non-compliance with any obligation under this Agreement. Denmark may bring a complaint to the Commission as to the non-compliance by Eurojust of its obligations under this Agreement. In such a case, the Commission shall investigate the matter and take all appropriate measures to settle the dispute in a mutual satisfactory manner. The relevant provisions of the EU Treaties governing proceedings before the Court of Justice shall apply.
6. The Protocol on the Statute of the Court of Justice of the European Union and its Rules of Procedure shall apply.

Chapter V

Final provisions

Article 23

Administrative arrangement implementing this Agreement

An administrative arrangement between the Parties shall implement non-essential elements of this Agreement, such as technical and practical issues.

Article 24

Monitoring of the implementation

1. For 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 27 of this Agreement.
3. The Parties agree that to further the cooperation and facilitate the monitoring of the implementation of this agreement, regular exchanges will take place, including by means of High level meetings between Eurojust and the competent authorities of Denmark.
4. Eurojust shall transmit its annual report to the national parliament of Denmark, which may present observations and conclusions.
5. Eurojust shall also transmit to the national parliament of Denmark for its information, the results of studies and strategic projects elaborated or commissioned by Eurojust, the programming document referred to in Article 15 of the Eurojust Regulation and working arrangements concluded with third parties.

Article 25

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 data protection supervisory authorities to ensure an appropriate level of independence of the oversight process.

Article 26

Financial contribution

1. Denmark shall contribute to the revenue of Eurojust an annual sum calculated in accordance with its Gross National Income (GNI) as a percentage of the GNI of all participating Member States, including Denmark, in accordance with a formula laid down in the Annex to this Agreement.
2. The financial contribution referred to in paragraph 1 shall be incurred as from the day following the entry into force of this Agreement. The first financial contribution shall be reduced proportionally to the remaining time in the year after the entry into force.
3. Without prejudice to paragraphs 1 and 2, the Contracting Parties shall bear their own expenses which arise in the course of implementation of the present Agreement, unless stipulated otherwise in this Agreement.

Article 27

Settlement of disputes

The Parties shall promptly meet on request of either of them to solve any dispute concerning the interpretation or application of this Agreement or any question affecting the relationship between them.

Article 28

Transitional provisions

1. Any personal data and information exchanged between Eurojust and Denmark on the basis of the Eurojust Decision shall be considered to have been lawfully obtained and processed, and any conditions applicable to such data shall remain valid. The data shall be maintained under the responsibility of the Party which received the data, and shall, as of the moment of the entry into force of this Agreement, be processed in accordance with the data protection provisions included in this Agreement and the Eurojust Regulation, unless the other Contracting Party requires that such information or data be deleted.
2. The Representative and his/her Deputy or Assistant shall be connected to Eurojust's case management system under the same conditions as Liaison Prosecutors posted at Eurojust .

Article 29

Termination of this Agreement

1. In case Denmark would no longer be bound by the Schengen acquis, this Agreement shall be terminated on the same date as that acquis ceases to apply to Denmark.
2. This Agreement shall be terminated if Denmark informs the other Member States, in accordance with Article 7 of Protocol 22, that it no longer wishes to avail itself of the provisions of Part I of that Protocol.
3. This Agreement shall also be terminated if, following a notification in accordance with Article 8 of Protocol 22, Part I of that Protocol is replaced by the provisions in the Annex thereto and Denmark notifies pursuant to such provisions its intention to accept the Eurojust Regulation and its amending or replacing acts. Such termination shall take effect on the same date as the Eurojust Regulation becomes applicable to Denmark.
4. This Agreement may be terminated by each Party with three months' notice.
5. 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 that has been communicated.

Article 30

Entry into force

This Agreement shall enter into force on 11 December 2019. It shall remain in force until its termination in accordance with Article 29.

Done atthis day of two thousand and in duplicate in the [...] and English languages, both texts being equally authentic.

For [...]

For Eurojust

[to be completed]

The President

Annex to the draft Cooperation Agreement between Eurojust and Denmark**Formula to calculate the contribution of Denmark to the revenue of Eurojust**

The financial contribution of Denmark to the revenue of Eurojust as referred to in Article 26 of this Agreement, which shall be paid directly into Eurojust's budget, shall be calculated in the following way:

1. The most updated final figures of the Gross National Income (GNI) of Denmark available on 31 March of each year according to subparagraphs 2 and 3 shall be divided by the sum of the GNI figures of all the States participating in Eurojust available for the same year, including the GNI figure for Denmark. The obtained percentage will be applied to the part of the authorised Eurojust's revenue as defined in Article 60(3) of the Eurojust Regulation in the year under consideration to obtain the amount of the financial contribution of Denmark.

The calculation shall be made on the basis of the aggregate GNI at market prices and its components, supplied by the Member States in accordance with Article 2(2) of Regulation (EC, Euratom) No 1287 /2003.

For the purposes of calculating the contribution, amounts shall be converted between the national currency and the euro at the exchange rate on the last day of quotation of the calendar year preceding the budget year concerned, as published in the Official Journal of the European Union, C series.

2. The financial contribution shall be paid in euro.
3. Denmark shall pay its financial contribution no later than 45 days after receiving the debit note. Any delay in payment shall give rise to the payment of default interest by Denmark on the outstanding amount from the due date. The interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first day of the month in which the deadline falls, increased by 3,5 percentage points.
4. Denmark's financial contribution shall be adapted in accordance with this Annex when the financial contribution from the EU entered in the general budget of the EU as defined in Article 60(3) of the Eurojust Regulation is increased pursuant to Articles 30, 31 or 44 of the EU Financial Regulation (2018/1046). In such a case, the difference shall be due 45 days after receiving the debit note from the Commission.

5. In the event that payment credits of Eurojust received from the EU according to Article 60(3) of the Eurojust Regulation related to a year N are not spent by 31 December of year N or that Eurojust budget of the year N has been lowered according to Articles 30, 31 or 44 of the EU Financial Regulation (2018/1046) the part of these unspent or lowered payment credits corresponding to the percentage of the contribution made by Denmark shall be transferred to the budget of year N+1 of Eurojust.
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Letter of the President of Eurojust of 21 March 2019, stating that the College of Eurojust approved the cooperation agreement with Denmark



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

D190066

To the attention of the President of the JHA Council of the EU
Mr Tudorel Toader
Minister of Justice
Romania

Via e-mail only:
[\[roland.genson@consilium.europa.eu\]](mailto:roland.genson@consilium.europa.eu)

The Hague, 21 March 2019

Approval by the Council of the EU of the draft Agreement on Cooperation between Eurojust and the Kingdom of Denmark

Dear Minister Toader,

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 the Kingdom of Denmark.

Eurojust is further pleased to state that the negotiations with the Kingdom of Denmark 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 21 March 2019. The Joint Supervisory Board of Eurojust has been consulted and already provided an informal positive opinion concerning the provisions on data protection. The formal opinion will be issued on 28 March 2019 and will be forwarded to you as soon as Eurojust receives it.

We welcome the Council's approval of this Agreement to enable Eurojust, as well as the Member States, to benefit from cooperation with the Kingdom of Denmark and ensure and enhance the safety of all EU citizens.

Yours sincerely,


Ladislav Hamran
President of Eurojust

Encl.

- Draft Agreement on Cooperation between Eurojust and the Kingdom of Denmark
- Annex - Formula to calculate the contribution of Denmark to the revenue of Eurojust
- Informal positive opinion of the Joint Supervisory Board of Eurojust

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Page 1 of 1

Opinion of the Joint Supervisory Body



**Opinion of the Joint Supervisory Body of Eurojust on the draft Agreement on Criminal Justice
Cooperation between Eurojust and the Kingdom of Denmark**

At its meeting on 28 March 2019 the Joint Supervisory Body of Eurojust (hereinafter JSB) considered the draft Agreement on Criminal Justice Cooperation between Eurojust and the Kingdom of Denmark (hereinafter Denmark), in order to give its opinion in accordance with Article 26a(2) of the Council Decision 2002/187/JHA 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.

The JSB takes note that as of 12 December 2019, Regulation (EU) 2018/1727 (hereinafter referred to as the "Eurojust Regulation") will apply and that, as a consequence both of the application of Protocol (no. 22) on the position of Denmark under which Denmark does not take part in the adoption of measures pursuant to Title V of Part Three of the TFEU and that such measures are not binding upon nor applicable in Denmark; and of the fact that Denmark has so far not exercised the option provided for in Part IV of the said Protocol which would allow it to fully participate in the new Eurojust Regulation, Denmark will no longer be part of Eurojust and will be regarded as a third country with respect to Eurojust.

The JSB notes however that, while being regarded as a third country with respect to Eurojust, Denmark is not just a third country where an adequate level of data protection should be considered as sufficient but it is still a Member State of the European Union and therefore it is appropriate to ensure the full application of Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 to the Danish competent authorities with respect to the personal data exchange pursuant to this draft Agreement.

The JSB appreciates the fact that Eurojust, through its Data Protection Officer, has been in close contact with it during the process of discussions in preparation of the draft cooperation agreement.

After careful deliberation and discussion, the JSB concludes the following:

- Considering the draft agreement contains robust and detailed data protection provisions on the exchange of personal data offering legal certainty to data subjects whose data are being processed in this context;

- Considering the data protection provisions are fully in line with the new EU data protection legal framework, comprising the Police Directive (EU) 2016/680 and the Eurojust Regulation (EU) 2018/1727 and the Regulation (EU) 2018/1725;
- Considering that the Data Protection Officer has been actively involved in the drafting and negotiation process;
- Considering that Article 11 of the draft Agreement includes the provision that the protection of personal data processed by each of the Parties pursuant to this draft Agreement shall be ensured: a) as regards Denmark by the application of Directive (EU) 2016/680 without prejudice to the specific provisions of this draft Agreement and, b) as regards Eurojust, by the application of the Eurojust Regulation and Regulation (EU) 2018/1725;

The JSB therefore gives a positive opinion on the draft agreement.

Done at The Hague,
On 28 March 2019


Wilbert Tomesen
Chair of the Joint Supervisory Body of Eurojust