



Brussels, 11 October 2019
(OR. en)

12485/19

JAIEX 138
COWEB 108
EUROJUST 163
COPEN 368

'I/A' ITEM NOTE

| | |
|-----------------|--|
| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee (Part 2)/Council |
| No. prev. doc.: | 6903/19, 8129/19, 10334/19 |
| Subject: | Draft Council Implementing Decision approving the conclusion by Eurojust of the Agreement on Cooperation between Eurojust and Serbia - Adoption |

1. Article 26a(2) of Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view of reinforcing the fight against serious crime¹, as amended, provides that Eurojust may conclude agreement with third States. According to the said provision, *"Such agreements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers or liaison magistrates to Eurojust. Such agreements 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. Eurojust shall inform the Council of any plans it has for entering into such negotiations and the Council may draw any conclusions it deems appropriate."*
2. By letter of 31 January 2019, the President of Eurojust informed the Council of Eurojust's plans to start formal negotiations to enter into a cooperation agreement with Serbia.

¹ OJ L 63, 6.3.2002, p. 1.

3. On 7 March 2019, the Council (Justice and Home Affairs) took note of these plans ², without drawing any conclusion as referred to in Article 26a(2) of Council Decision 2002/187/JHA.
4. Following the successful negotiations, the college of Eurojust approved the draft agreement between Eurojust and Serbia on 26 March 2019 ³. The Joint Supervisory Body of Eurojust delivered a positive opinion concerning the provisions relating to data protection on 28 March 2019 ⁴.
5. Following up to this, a draft Council implementing decision approving the conclusion by Eurojust of the draft cooperation agreement between Eurojust and Serbia was submitted to the Member States ⁵. At the meeting of the JAIEX Working Party on 3 May 2019, this draft implementing decision was examined. No observations were made.
6. In line with the CJEU judgment in case C-540/13 ⁶, the European Parliament was consulted on the draft Council implementing decision as revised by the legal-linguists ⁷, accompanied by the draft cooperation agreement between Eurojust and Serbia. The European Parliament delivered its positive opinion on this decision on 10 October 2019.
7. In the light of the foregoing, and subject to confirmation by Coreper, the Council is invited to adopt the draft Council implementing decision approving the conclusion by Eurojust of the agreement on cooperation between Eurojust and Serbia, as set out in 10334/19.

² 6903/19.

³ 8129/19, Annex II.

⁴ 8129/19, Annex III.

⁵ 8129/19, Annex IV.

⁶ In its judgment of 16 April 2015 in Case C-540/13, the Court of Justice of the European Union 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 Union. This obligation to consult the European Parliament applies even in cases where the relevant provision of the basic act - like Article 26a(2) of Council Decision 2002/187/JHA - does not explicitly provide so. In line with this judgment, the conclusion of the cooperation agreement between Eurojust and Serbia should be approved by adopting a Council Implementing Decision regarding which the European Parliament should be consulted on the basis of Article 39(1) of the former Treaty on European Union.

⁷ 10334/19.