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Subject : Draft Council Decision on the strengthening of Eurojust amending Council Decision 2002/187/JHA of 28 February 2002, as amended by Council Decision 2003/659/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

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**I. INTRODUCTION**

1. On 7 January 2008, Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal submitted a proposal for a Council Decision on the strengthening of Eurojust amending Council Decision 2002/187/JHA of 28 February 2002, as amended by Council Decision 2003/659/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.
2. By a letter of 15 February 2008, the European Parliament has been invited to deliver its opinion on the proposal. The opinion has been delivered by the European Parliament during its plenary session on 1-4 September 2008.

3. The proposal is subject to parliamentary scrutiny reservations entered by some delegations.
4. At its meeting on 24-25 July 2008 the Council reached a general approach on the text as set out in the Annex to this note with the exception of the Preamble and Annex II.
5. Delegations will find in Annex I the text as agreed by the Council. Annex II contains the Annex referred to in Article 13(9) of the proposal. Annex III contains the Annex referred to in the footnote under Article 4 of the proposal. Annex IV contains the statements made by the Council together with the Commission and by the Commission alone. In addition, in order to ensure the financing of the plenary meetings of EJM in the year 2009, a statement, made on behalf of the Secretary General of the Council/High Representative for the Common Foreign and Security Policy, to be reflected in the minutes of the Council upon the adoption of this instrument is set out in Annex IV.
6. It is noted that Annex I is a consolidated version of the Eurojust Decision containing all articles. It is understood that the final version to be adopted by the Council will only contain amendments to the Eurojust Decision of 2002. After the examination of the proposal has been finalised, jurist linguists will be asked to draft the amending Council Decision in an appropriate form.
7. The modifications made further to the observations received from the delegations are indicated in the text set out in the Annexes I and II to this note.

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**Council Decision on the strengthening of Eurojust and  
amending Decision 2002/187/JHA**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(2) and 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden with a view to adopting a Council Decision concerning the strengthening of Eurojust and amending Decision 2002/187/JHA,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) Eurojust was set up by Decision 2002/187/JHA<sup>1</sup> as a body of the EU with legal personality to stimulate and improve coordination and cooperation between competent judicial authorities of the Member States. (2) After more than 5 years, it is now time to assess the experience gained by Eurojust and further to enhance its operational effectiveness by taking account of that experience<sup>2</sup>.
- (3) The time has come to ensure that Eurojust becomes more operational and that the status of national members is approximated.

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<sup>1</sup> OJ L 63, 6.3.2002, p. 1. Decision as amended by Decision 2003/659/JHA (OJ L 245, 29.9.2003, p. 44).

<sup>2</sup> NL finds this recital superfluous and suggests its deletion.

- (3a) In order to ensure continuous and effective contribution from the Member States to the achievement by Eurojust of its objectives, the national member should be required to have his or her regular place of work at the seat of Eurojust.
- (3b) It is necessary to define a common basis of powers which every national members should have in his or her capacity as a competent national authority acting in accordance with national law.<sup>1</sup> Some of these powers should be granted to the national members for urgent cases where it is not possible for the national member to identify or contact the competent national authority in a timely manner. It is understood that these powers will not have to be exercised in so far as it is possible to identify and contact the competent authority.
- (3c) This decision does not affect the manner in which the Member States organise their internal judicial system or administrative procedures for the designation of the national member and the setting up of the internal working of the national desks at Eurojust.<sup>2</sup>
- (4) The setting up of an On-Call Coordination within Eurojust is necessary to make Eurojust available around the clock and enable it to intervene in urgent cases. It should be the responsibility of each Member State to ensure that the representatives are able to act on 24 hour / 7 day basis.<sup>3</sup>
- (4a) Member States should ensure that competent national authorities react without undue delay to requests made under this Decision, even if competent national authorities refuse to comply with requests made by the national member<sup>4</sup>.

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<sup>1</sup> CZ proposed to insert here the following sentence: *Exercise of powers of national members prescribed in Art. 9c and 9d shall not substitute due performances of duties of competent national authorities, national members shall act only in exceptional cases.* The delegation considers it important to indicate in the preamble that the powers exercised by the national member according to Articles 9c and 9d should be primarily exercised by the competent national authorities and the national member should use them only in exceptional cases. It is noted that it is implied in the relevant Articles. Additionally, it is reminded that the preamble should not contain any direct references to specific articles of the instrument.

<sup>2</sup> Recital aimed at addressing IT scrutiny reservation linked to Articles 9a-9f

<sup>3</sup> Addition made following a suggestion from CZ

<sup>4</sup> Recital included following a suggestion from HU.

- (4b) The role of the College should be enhanced in cases of conflicts of jurisdiction and in cases of recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition.
- (5) Eurojust national coordination systems should be set up in the Member States to coordinate the work carried out by the national correspondents for Eurojust, the national correspondent for Eurojust for terrorism matters, the national correspondent for the European Judicial Network and up to three other contact points of the European Judicial Network, as well as representatives in the Networks for Joint Investigation Teams, War Crimes, Asset Recovery and Corruption.
- (5a) The national coordination system should ensure that the Case Management System (CMS) receives information related to the Member State concerned in an efficient and reliable manner. However, the national coordination system does not have to be responsible for actually transmitting information to Eurojust. Member States should decide on the best channel to be used for the transmission of information to Eurojust.
- (5b) In order to enable the Eurojust national coordination system to fulfil its tasks, connection to the CMS should be ensured. The connection to the CMS will be made taking due account of national IT systems. Access to the CMS at national level is based on the central role played by the national member who is responsible for the opening and management of temporary work files.
- (5c) Council Framework Decision 2008/XX/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (...) <sup>1</sup>is applicable to the processing by Member States of the personal data transferred between Member States and Eurojust. The relevant set of data protection provisions of the Council Decision setting up Eurojust will not be affected by the Framework Decision and contains specific provisions on the protection of personal data regulating these matters more in detail because of the particular nature, functions and competences of Eurojust.

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<sup>1</sup> Deletion following a suggestion made by COM.

(5d) Eurojust should be authorised to process certain personal data on persons who, under the national legislation of the Member States concerned are suspected of having committed or having taken part in a criminal offence in respect of which Eurojust is competent or who have been convicted of such an offence. The list of personal data which Eurojust is authorised to process should include telephone numbers, e-mail addresses, vehicle registration data, DNA profiles established from the non-coding part of DNA, photographs and fingerprints. The list should also include traffic data and location data and the related data necessary to identify the subscriber or user of a publicly available electronic communications service: this should not include data revealing the content of the communication. It is not intended that Eurojust would carry out automated comparison of DNA profiles or fingerprints.<sup>1</sup>

(5dd) .<sup>2</sup>

(5e) Eurojust should be given the opportunity to prolong the deadlines for storage of personal data in order to achieve its objectives. Such decisions should be taken following careful consideration of particular needs. Any extension of deadlines for processing of personal data, where prosecution is statute barred in all Member States concerned, should be decided only where there is a specific need to provide assistance under this decision<sup>3</sup>.

(5f) The Rules on the Joint Supervisory Body should facilitate its functioning.

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<sup>1</sup> Addition proposed by AT

<sup>2</sup> CZ would like to insert an additional recital ( i.e. Standards of the processing of data shall be equivalent to the standards applied in Europol ) as it considers that Eurojust works on the cases which are of equivalent seriousness as the cases in Europol, therefore Eurojust should process the personal data in an equivalent way as they are processed in Europol. In Europol the system is well-developed and it is possible to trace the flow of the data, in contrary to the system in Eurojust, as the CMS has more of an evidential character. It is however indicated that the relation between the Europol and Eurojust will be governed by the agreement established between the two bodies.

<sup>3</sup> New Recital included following the suggestion made by PL.

- (5g)<sup>1</sup> Transmission of information to Eurojust should be improved by providing clear and limited obligations for national authorities. Eurojust should implement priorities set by the Council, in particular those set on the basis of the on the basis of the Organised Crime Threat Assessment (OCTA), as referred to in the Hague Programme.<sup>2</sup>
- (6) Eurojust is to maintain privileged relations with the European Judicial Network based on consultation and complementarity<sup>3</sup>. The present decision will help clarify the respective roles of Eurojust and the EJM and their mutual relation, while<sup>4</sup> (...) maintaining the specificity of the European Judicial Network. (...)
- (6a) Nothing in this Decision should be so interpreted as to affect the autonomy of the secretariats of the networks mentioned in this Decision when they discharge their function as Eurojust staff in accordance with the Staff Regulation.
- (7) It is also necessary to strengthen Eurojust's capacity to work with external partners, such as third States, Europol, OLAF, the Joint Situation Center and FRONTEX ;
- (8) Provision should be made for Eurojust to post liaison magistrates to third States in order to achieve objectives similar to those assigned to liaison magistrates seconded by the Member States on the basis of Joint Action 96/277/JHA<sup>5</sup>.

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<sup>1</sup> BE made the following remark: The relation between the 2 sentences should be clarified or the second sentence should appear in a separate recital.

<sup>2</sup> Clarification made following a remark by NL. In addition the following reference should be inserted in the footnote: OJ 53/9 of 3.3.2005.

<sup>3</sup> The addition is made following a suggestion made by BE.

<sup>4</sup> Modification aimed at indicating that this instrument aims at solving the possible problems of duplication of work of EJM and Eurojust, as suggested by NL.

<sup>5</sup> CZ suggested to add the following sentence at the end of this recital: *The liaison magistrates shall not be able to exercise the powers which are granted to the national members.* It is however reminded that the specific provisions concerning the powers of the liaison magistrates are set out in the Council Decision and in the agreements made by Eurojust with the third States.

(9) This Decision allows the principle of public access to official documents to be taken into account.

### *Article 1*

#### *Establishment and legal personality*

This Decision establishes a unit, referred to as “Eurojust”, as a body of the Union. Eurojust shall have legal personality.

### *Article 2*

#### *Composition of Eurojust*

1. Eurojust shall have one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence.
  - 1a. Member States shall ensure continuous and effective contribution to the achievement by Eurojust of its objectives under Article 3. To fulfil that objective:
    - (a) the national member shall be required to have his or her regular place of work at the seat of Eurojust ;
    - (b) each national member shall be assisted by one deputy and by another person as an assistant member. The deputy and the assistant may have their regular place of work at Eurojust. More deputies or assistants may assist the national member and may, if necessary and with the agreement of the College, have their regular place of work at Eurojust.
2. The national member shall have a position which grants him or her the powers as referred to in this Decision in order to be able to fulfil his or her task.
  - 2a. National members, deputies and assistants shall be subject to the national law of their Member State as regards their status.

3. The deputy shall fulfil criteria provided for in paragraph 1 and be able to act on behalf of or substitute the national member. An assistant may also act on behalf of or substitute the national member if he or she fulfils the criteria provided for in paragraph 1.
4. Eurojust shall also be linked to a Eurojust national coordination system in accordance with Article 12.
5. Eurojust shall have the possibility of posting liaison magistrates in third countries in accordance with the provisions of this Decision.
6. Eurojust shall, in accordance with the provisions of this Decision, have a secretariat headed by an Administrative Director.

### *Article 3*

#### *Objectives*

1. In the context of investigations and prosecutions, concerning two or more Member States, of criminal behaviour referred to in Article 4 in relation to serious crime, particularly when it is organised, the objectives of Eurojust shall be:
  - (a) to stimulate and improve the coordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States, taking into account any request emanating from a competent authority of a Member State and any information provided by any body competent by virtue of provisions adopted within the framework of the Treaties ;
  - (b) to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition;
  - (c) to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.

2. In accordance with the rules laid down by this Decision and at the request of a Member State's competent authority, Eurojust may also assist investigations and prosecutions concerning only that Member State and a non-Member State where an agreement establishing cooperation pursuant to Article 26a(2) has been concluded with the said State or where in a specific case there is an essential interest in providing such assistance.
3. In accordance with the rules laid down by this Decision and at the request either of a Member State's competent authority or of the Commission, Eurojust may also assist investigations and prosecutions concerning only that Member State and the Community.

#### *Article 4*

#### *Competences*

1. The general competence of Eurojust shall cover:
  - (a) the types of crime and the offences in respect of which Europol is at all times competent to act;<sup>1</sup>
  - (b) other offences committed together with the types of crime and the offences referred to in point (a).
2. For types of offences other than those referred to in §1, Eurojust may in addition, in accordance with its objectives, assist in investigations and prosecutions at the request of a competent authority of a Member State.

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<sup>1</sup> The following footnote will be inserted in the Official Journal: *“It is noted that, at the time of the adoption of this Decision, the competence of Europol is as reflected in Article 4(1) of Decision .../.../JHA (Europol Decision) and in Annex A to that Decision”*. In addition, the text contained in Annex III will be published in the Official Journal together with the Eurojust amending Decision. This will be decided by Coreper/Council in the I/A point note upon the adoption of this Decision.

*Article 5*

*Tasks of Eurojust*

1. In order to accomplish its objectives, Eurojust shall fulfil its tasks:
  - (a) through one or more of the national members concerned in accordance with Art.6, or
  - (b) as a College in accordance with Art. 7 :
    - (i) when so requested by one or more of the national members concerned by a case dealt with by Eurojust, or
    - (ii) when the case involves investigations or prosecutions which have repercussions at Union level or which might affect Member States other than those directly concerned, or
    - (iii) when a general question relating to the achievement of its objectives is involved, or
    - (iv) when otherwise provided for in this Decision.
2. When it fulfils its tasks, Eurojust shall indicate whether it is acting through one or more of the national members within the meaning of Art. 6 or as a College within the meaning of Art.7.

*Article 5a*

*On-call coordination (OCC)*

1. In order to fulfil its tasks in urgent cases, Eurojust shall put in place an on-call coordination (OCC) able to receive and process at all times requests referred to it. The OCC shall be contactable, via a single OCC contact point at Eurojust, on a 24 hour / 7 day basis.
2. The OCC shall rely on one representative (OCC representative) per Member State who may be either the national member, his deputy, or an assistant entitled to replace the national member. The representative shall be able to act on a 24 hour / 7 day basis.
3. When in urgent cases, a request for, or a decision on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition, needs to be executed in one or more Member States the requesting or issuing competent authority may forward it to the OCC. The OCC contact point shall immediately forward it to the representative of the Member State from which the request originates and, if explicitly requested by the transmitting or issuing authority, to the OCC representatives of the Member States on the territory of which the request should be executed. These representatives shall act without delay, in relation to the execution of the request in their Member State, through the exercise of tasks or powers available to him or her and referred to in Article 6 and Articles 9a to 9g.
4. (...)
5. (...)

## *Article 6*

### *Tasks of Eurojust acting through its national members*

1. When Eurojust acts through its national members concerned, it:
  - (a) may ask the competent authorities of the Member States concerned, giving its reasons, to :
    - (i) undertake an investigation or prosecution of specific acts;
    - (ii) accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
    - (iii) coordinate between the competent authorities of the Member States concerned;
    - (iv) set up a joint investigation team in keeping with the relevant cooperation instruments;
    - (v) provide it with any information that is necessary for it to carry out its tasks;
    - (vi) take special investigative measures;
    - (vii) take any other measure justified for the investigation or prosecution;
  - (b) shall ensure that the competent authorities of the Member States concerned inform each other on investigations and prosecutions of which it has been informed;
  - (c) shall assist the competent authorities of the Member States, at their request, in ensuring the best possible coordination of investigations and prosecutions;
  - (d) shall give assistance in order to improve cooperation between the competent national authorities;
  - (e) shall cooperate and consult with the European Judicial Network, including making use of and contributing to the improvement of its documentary database;

- (f) shall, in the cases referred to in Article 3(2) and (3) and with the agreement of the College, assist investigations and prosecutions concerning the competent authorities of only one Member State;
  - (g) (...)
2. The Member States shall also ensure that competent national authorities react without undue delay to requests made under this Article.

### *Article 7*

#### *Tasks of Eurojust acting as a College*

1. When Eurojust acts as a College, it:
- (a) may in relation to the types of crime and the offences referred to in Article 4(1) ask the competent authorities of the Member States concerned, giving its reasons:
    - (i) to undertake an investigation or prosecution of specific acts;
    - (ii) to accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
    - (iii) to coordinate between the competent authorities of the Member States concerned;
    - (iv) to set up a joint investigation team in keeping with the relevant cooperation instruments;
    - (v) to provide it with any information that is necessary for it to carry out its tasks;
  - (b) shall ensure that the competent authorities of the Member States inform each other of investigations and prosecutions of which it has been informed and which have repercussions at Union level or which might affect Member States other than those directly concerned;

- (c) shall assist the competent authorities of the Member States, at their request, in ensuring the best possible coordination of investigations and prosecutions;
  - (d) shall give assistance in order to improve cooperation between the competent authorities of the Member States, in particular on the basis of Europol's analysis;
  - (e) shall cooperate and consult with the European Judicial Network, including making use of and contributing to the improvement of its documentary database;
  - (f) may assist Europol, in particular by providing it with opinions based on analyses carried out by Europol;
  - (g) may supply logistical support in the cases referred to in points (a), (c) and (d). Such logistical support may include assistance for translation, interpretation and the organisation of coordination meetings.
2. Where two or more national members can not agree on how to resolve a case of conflicts of jurisdiction as regards the undertaking of investigations or prosecution pursuant to Article 6 and in particular Article 6(1)(c), the College shall be asked to issue a written non-binding opinion on the case, provided the matter could not be resolved through mutual agreement between the competent national authorities concerned. The opinion of the College shall be promptly forwarded to the Member States concerned. This paragraph is without prejudice to paragraph 1(a)(ii).
3. Notwithstanding the provisions contained in any instruments adopted by the European Union regarding judicial cooperation, a competent authority may report to Eurojust recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition, and request the College to issue a written non-binding opinion on the matter, provided it could not be resolved through mutual agreement between the competent national authorities or through the involvement of the national members concerned. The opinion of the College shall be promptly forwarded to the Member States concerned.
4. (...)

## *Article 8*

### *Follow up to requests and opinions of Eurojust*

If the competent authorities of the Member States concerned decide not to comply with a request referred to in Articles 6(1)(a), 7(1)(a) or decide not to follow a written opinion referred to in Article 7(2) and 7(3), they shall inform Eurojust without undue delay of their decision and of the reasons for it. Where it is not possible to give the reasons for refusing to comply with a request because to do so would harm essential national security interests or would jeopardise the safety of individuals, the competent authorities of the Member States may cite operational reasons.

## *Article 9*

### *National members*

1. The length of a national member's term of office shall be at least 4 years. The Member State of origin may renew the term of office. The national member shall not be removed before the end of a term without prior information to the Council and indication of the reason thereof. Where a national member is President or Vice-President of Eurojust, his term of office as a member shall at least be such that he can fulfil his function as President or Vice-President for the full elected term.
2. All information exchanged between Eurojust and Member States shall be directed through the national member.
3. (...)

4. In order to meet Eurojust's objectives, the national member shall have at least equivalent access to or at least be able to obtain the information contained in the following types of registers of his or her Member State as would be available to him or her in his or her role as a prosecutor, judge or police officer, whichever is applicable, at national level:
- (i) criminal records;
  - (ii) registers of arrested persons;
  - (iii) investigation registers;
  - (iv) DNA registers;
  - (v) other registers of his Member State where he deems this information necessary for him to be able to fulfil his tasks.
- 4a. (...)
5. A national member may contact the competent authorities of his Member State directly.
6. (...)

*Article 9a*

*Powers of the national member conferred to him at national level*

1. When a national member exercises powers referred to in Articles 9b, 9c and 9d, he does so in his capacity as a competent national authority acting in accordance with national law and subject to the conditions laid down in Articles 9a to 9f. In the performance of his or her tasks the national member shall, where appropriate, make it known whenever he or she is acting in accordance with the powers granted to the national member under Articles 9a to 9d.

2. Each Member State shall define the nature and extent of the powers it grants its national member as regards judicial cooperation in respect of that State. However, each Member State shall confer on its national member at least powers described in Article 9b and, subject to Article 9f, powers described in Articles 9c and 9d, which would be available to him or her as a judge, prosecutor or police officer, whichever is applicable, at national level.
3. When appointing its national member and at any other time if appropriate, the Member State shall notify Eurojust and the Council General Secretariat of its decision regarding the implementation of paragraph 2 so that the latter can inform the other Member States. The Member States shall undertake to accept and recognise the prerogatives thus conferred insofar as they are in conformity with international commitments.
4. Each Member State shall also define the right for a national member to act in relation to foreign judicial authorities, in accordance with its international commitments.

*Article 9b*  
*Ordinary powers*

1. National members, in their capacity as competent national authorities, shall be entitled to receive, transmit, facilitate, follow up and provide supplementary information in relation to the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition. When powers referred to in this paragraph are exercised, the competent authority shall be informed promptly.
2. (...)
3. In case of partial or inadequate execution of a request for judicial assistance, national members, in their capacity as competent national authorities, shall be entitled to ask the competent national authority of his or her Member State for supplementary measures in order for the request to be fully executed.

*Article 9c*

*Powers exercised in agreement with a competent authority*

1. (...)
2. National members may, in their capacity as competent national authorities, in agreement with a competent national authority, or at its request and on a case-by-case basis, exercise the following powers:
  - (a) issuing and completing requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition;
  - (b) executing in their Member State, requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition ;
  - (c) ordering in their Member State investigative measures considered necessary at a coordination meeting organised by Eurojust to provide assistance to competent national authorities concerned by a concrete investigation and to which competent national authorities concerned with the investigation are invited to participate;
  - (d) authorising and coordinating controlled deliveries in their Member State.
3. Powers referred to in this Article shall, in principle, be exercised by a competent national authority.

*Article 9d*

*Powers exercised in urgent cases*

In their capacity as competent national authorities, national members shall, in urgent cases and in so far as it is not possible for them to identify or contact the competent national authority in a timely manner, be entitled:

- (a) to authorise and coordinate controlled deliveries in their Member State;
- (b) to execute, in relation to their Member State, a request for, or a decision on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.

As soon as the competent national authority is identified or contacted, it shall be informed of the exercise of powers referred to in this Article.

*Article 9e*

*Conditions for the exercise of powers*

(...)

*Article 9f*

*Requests from national members where powers cannot be exercised*

1. The national member, in his or her capacity as a competent national authority, shall be at least competent to submit a proposal to the authority competent for the carrying out of powers referred to in Articles 9c and 9d when conferring such powers to the national member is contrary to :
  - (a) constitutional rules,  
or
  - (b) fundamental aspects of the criminal justice system:
    - (i) regarding the division of powers between police, prosecutors and judges,
    - (ii) regarding the functional division of tasks between prosecution authorities,  
or
    - (iii) related to the federal structure of the Member State concerned.

2. Member States shall ensure that, in cases referred to in paragraph 1, the request issued by the national member be handled without undue delay by the competent national authority.

#### *Article 9g*

##### *Participation of the national member in joint investigation teams*

National members shall be entitled to participate in joint investigation teams, including in their setting up, in accordance with Article 13 of the convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union or Framework Decision 2002/465/JHA concerning its own Member State. However, Member States may make the participation of the national member subject to the agreement of the competent national authority. National members, or deputies or assistants, shall be invited to participate in any joint investigation team involving their Member State and for which Community funding is provided under the applicable financial instruments. Each Member State shall define whether the national member participates in the Joint Investigation Team as a national competent authority or on behalf of Eurojust.

#### Article 10

##### *College*

1. The College shall consist of all the national members. Each national member shall have one vote.
2. The Council shall, acting by a qualified majority, approve Eurojust's rules of procedure on a proposal from the College. The College shall adopt its proposal by a two-thirds majority after consulting the Joint Supervisory Board provided for in Article 23 as regards the provisions on the processing of personal data. The provisions of the rules of procedure which concern the processing of personal data may be made the subject of separate approval by the Council.

3. When acting in accordance with Art. 7(1)(a), (2) and (3) , the College shall take its decisions by a two-thirds majority. Other decisions of the College shall be taken in accordance with the rules of procedure.

## Article 11

### *Role of the Commission*

1. The Commission shall be fully associated with the work of Eurojust, in accordance with Art. 36(2) of the Treaty. It shall participate in that work in the areas within its competence.
2. As regards work carried out by Eurojust on the coordination of investigations and prosecutions, the Commission may be invited to provide its expertise.
3. For the purpose of enhancing cooperation between Eurojust and the Commission, Eurojust may agree on necessary practical arrangements with the Commission.

## Article 12

### *Eurojust national coordination system*

1. Each Member State shall designate one or more national correspondents for Eurojust.
  - 1a. (...)
2. Each Member State shall, before ...<sup>1</sup>, set up a Eurojust national coordination system to ensure coordination of the work carried out by:
  - (a) the national correspondents for Eurojust;
  - (b) the national correspondent for Eurojust for terrorism matters;
  - (c) the national correspondent for the European Judicial Network and up to three other contact points of the European Judicial Network;

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<sup>1</sup> Two years after the entry into force of the decision amending Eurojust decision.

- (d) national members or contact points of the Network for Joint Investigation Teams and of the Networks set up by Decision 2002/494/JHA (war crime networks), Decision 2007/845/JHA (asset recovery offices) and by Council Decision .../.../JHA (corruption).
3. The persons referred to in paragraphs 1 and 2 shall maintain their position and status under national law.
  4. The national correspondents for Eurojust shall be responsible for the functioning of the Eurojust national coordination system. When several correspondents for Eurojust are designated, one of them shall be responsible for the functioning of the Eurojust national coordination system.
  5. The Eurojust national coordination system shall facilitate, within the Member State, the carrying out of the tasks of Eurojust, in particular by :
    - (a) ensuring that the Case Management System referred to in Article 16 receives information related to the Member State concerned in an efficient and reliable manner;
    - (b) assisting in determining whether a case should be dealt with the assistance of Eurojust or of the European Judicial Network;
    - (c) assisting the national member to identify proper authorities for the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition;
    - (d) maintaining close relations with the Europol National Unit.

6. In order to perform the objectives referred to in paragraph 5, persons referred to in paragraphs 1 and 2(a) to (c) shall, and persons referred to in paragraph 2(d), may be connected to the Case Management System in accordance with this Article and Articles 16, 16a, 16b and 18 and the Rules of Procedure of Eurojust. The connection to the Case Management System shall be at the charge of the EU budget.
7. Nothing in this Article shall be understood as affecting direct contacts between competent judicial authorities as provided for in instruments on judicial cooperation, such as Article 6 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union. Relations between the national member and national correspondents shall not preclude direct contacts between the national member and his competent authorities.
8. (...)

### *Article 13*

#### *Exchanges of information with the Member States and between national members*

1. The competent authorities of the Member States shall exchange with Eurojust any information necessary for the performance of its tasks in accordance with Articles 4 and 5 in accordance with rules on data protection set out in this Decision. This shall at least include information referred to in Paragraphs 4, 5 and 8.
  - 1a. The transmission of information to Eurojust shall be interpreted as a request for the assistance of Eurojust in the case concerned only if so specified by a competent authority.
2. The national members of Eurojust shall be empowered to exchange any information necessary for the performance of the tasks of Eurojust, without prior authorisation, among themselves or with their Member State's competent authorities. In particular national members shall be promptly informed of a case which concerns them.

3. This Article shall be without prejudice to other obligations regarding the transmission of information to Eurojust, including Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences.
4. Member States shall ensure that national members are informed of the setting up of a joint investigation team, whether it is set up under Article 13 of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union or under Framework Decision 2002/465/JHA, and of the results of such teams.
5. Member States shall ensure that their national member is informed without undue delay of any case in which at least three Member States are directly involved and for which requests for or decisions on judicial cooperation including regarding instruments giving effect to the principle of mutual recognition have been transmitted to at least two Member States ;

and

- a) the offence involved is punishable in the issuing or requesting State by a custodial sentence or a detention order for a maximum period of at least 5 or 6 years, to be decided by the Member State concerned, and is included in the following list :
  - (a) trafficking in human beings;
  - (b) sexual exploitation of children and child pornography;
  - (c) drug trafficking;
  - (d) trafficking in firearms, their parts and components and ammunition;
  - (e) corruption;
  - (f) fraud affecting the financial interests of the European Community;

- (g) counterfeiting of the euro;
- (h) money laundering;
- (i) attacks against information systems.

or

- b) there are factual indications that a criminal organisation is involved;

or

- c) there are indications that the case may have serious cross-border dimension or repercussions at Union level or that it might affect Member States other than those directly involved.

6. (...)

7. (...)

8. Member States shall ensure that their national member is also informed of :

- a. cases where conflicts of jurisdiction have arisen or are likely to arise ;
- b. controlled deliveries affecting at least three States, at least two of which are Member States;
- c. repeated difficulties or refusals regarding the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effects to the principle of mutual recognition.

8a. National authorities shall not be obliged in a particular case to supply information if this would mean:

- (a) harming essential national security interests; or

- (b) jeopardizing the safety of individuals.
- 8b. This Article shall be without prejudice to conditions set in bilateral or multilateral agreements or arrangements between Member States and third countries including any conditions set by third countries concerning the use of information once supplied.
9. Information transmitted to Eurojust pursuant to paragraphs 4, 5 and 8 shall at least include, where available, the types of information contained in the list provided for in the Annex to this Decision <sup>1</sup>.
10. Information referred to in this Article shall be transmitted to Eurojust in a structured way.
11. Within five years after the entry into force of this Decision, the Commission shall establish, on the basis of information transmitted by Eurojust, a report on the implementation of this Article, accompanied by any proposal it may deem appropriate, including with a view to considering an amendment of paragraphs 4 to 8 and the Annex provided for in paragraph 9.

*Article 13a*

*Information provided by Eurojust to national authorities*

1. Eurojust shall provide national competent authorities with information and feedback on the results of the processing of information, including the existence of links with cases already stored in the Case Management System.
2. Furthermore, where a competent national authority requests Eurojust to provide it with information, Eurojust shall transmit it in the timeframe requested by that authority.

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<sup>1</sup> The exact content of the Annex, which is contained in Annex II, will be discussed after a general approach has been reached on the text of the Decision.

*Article 14*

*Processing of personal data*

1. Insofar as it is necessary to achieve its objectives, Eurojust may, within the framework of its competence and in order to carry out its tasks, process personal data, by automated means or in structured manual files.
2. Eurojust shall take the necessary measures to guarantee a level of protection for personal data at least equivalent to that resulting from the application of the principles of the Council of Europe Convention of 28 January 1981 and subsequent amendments thereto where they are in force in the Member States.
3. Personal data processed by Eurojust shall be adequate, relevant and not excessive in relation to the purpose of the processing, and, taking into account the information provided by the competent authorities of the Member States or other partners in accordance with Art. 13, 26 and 26a accurate and up-to-date. Personal data processed by Eurojust shall be processed fairly and lawfully.
4. (...)

*Article 15*

*Restrictions on the processing of personal data*

1. When processing data in accordance with Article 14(1), Eurojust may process only the following personal data on persons who, under the national legislation of the Member States concerned are suspected of having committed or having taken part in a criminal offence in respect of which Eurojust is competent or who have been convicted of such an offence:
  - (a) surname, maiden name, given names and any alias or assumed names;
  - (b) date and place of birth;
  - (c) nationality;
  - (d) sex;
  - (e) place of residence, profession and whereabouts of the person concerned;
  - (f) social security numbers, driving licences, identification documents and passport data;
  - (g) information concerning legal persons if it includes information relating to identified or identifiable individuals who are the subject of a judicial investigation or prosecution;
  - (h) bank accounts and accounts with other financial institutions;
  - (i) description and nature of the alleged offences, the date on which they were committed, the criminal category of the offences and the progress of the investigations ;
  - (j) the facts pointing to an international extension of the case ;
  - (k) details relating to alleged membership of a criminal organisation ;

- (l) telephone numbers, e-mail addresses, data referred to in Article 2(2)(a) of Directive 2006/24/EC ;
  - (m) vehicle registration data ;
  - (n) DNA profiles established from the non-coding part of DNA, photographs and fingerprints.
2. When processing data in accordance with Art. 14(1), Eurojust may process only the following personal data on persons who, under the national legislation of the Member States concerned, are regarded as witnesses or victims in a criminal investigation or prosecution regarding one or more of the types of crime and the offences defined in Art. 4:
- (a) surname, maiden name, given names and any alias or assumed names;
  - (b) date and place of birth;
  - (c) nationality;
  - (d) sex;
  - (e) place of residence, profession and whereabouts of the person concerned;
  - (f) the description and nature of the offences involving them, the date on which they were committed, the criminal category of the offences and the progress of the investigations.
3. However, in exceptional cases, Eurojust may also, for a limited period of time, process other personal data relating to the circumstances of an offence where they are immediately relevant to and included in ongoing investigations which Eurojust is helping to coordinate, provided that the processing of such specific data is in accordance with Articles 14 and 21. The Data Protection Officer referred to in Article 17 shall be informed immediately of recourse to this paragraph. Where such other data refer to witnesses or victims within the meaning of paragraph 2, the decision to process them shall be taken jointly by at least two national members.
- 3a. (...)

4. Personal data, processed by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning health or sex life may be processed by Eurojust only when such data are strictly necessary for the national investigations concerned as well as for coordination within Eurojust. The Data Protection Officer shall be informed immediately of recourse to this paragraph. Such data may not be processed in the Index referred to in Art. 16(1). Where such other data refer to witnesses or victims within the meaning of paragraph 2, the decision to process them shall be taken by the College.

### *Article 16*

#### *Case Management System, index and temporary work files*

1. In accordance with this Decision, Eurojust shall establish a Case Management System composed of temporary work files and of an index which contain personal and non-personal data.
2. The Case Management System shall be intended to:
  - (a) support the management and coordination of investigations and prosecutions which Eurojust is assisting, in particular by the cross-referencing of information;
  - (b) facilitate access to information on ongoing investigations and prosecutions;
  - (c) facilitate the monitoring of lawfulness and compliance with the provisions of this Decision concerning the processing of personal data.
- 2a. The Case Management System, insofar as this is in conformity with rules on data protection contained in this Decision, may be linked to the secure telecommunications connection referred to in Article 10 of Council Decision .../.../JHA of ... on the European Judicial Network <sup>1</sup>.
- 2b. The index shall contain references to temporary work files processed within the framework of Eurojust and may contain no personal data other than those referred to in Article 15 (1)(a) to (i), (k) and (m) and in Article 15(2).

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<sup>1</sup> OJ ...

3. In the performance of their duties in accordance with this Decision, the national members of Eurojust may process data on the individual cases on which they are working in a temporary work file. They shall allow the Data Protection Officer to have access to the work file. The Data Protection Officer shall be informed by the national member concerned of the opening of each new temporary work file that contains personal data.
4. For the processing of case related personal data, Eurojust may not establish any automated data file other than the Case Management System.

*Article 16a*

*Functioning of temporary work files and the index*

1. A temporary work file shall be opened by the national member concerned for every case on which information is transmitted to him in so far as this transmission is in accordance with this Decision or with instruments referred to in Article 13(3). The national member shall be responsible for the management of the temporary work files which they have opened.
  - 1a. (...)
2. The national member who has opened a temporary work file shall decide, on a case by case basis, whether to keep the temporary work file restricted or to give access to it or to parts of it, where necessary to enable Eurojust to carry out its tasks, to other national members or to authorised Eurojust staff.
3. The national member who has opened a temporary work file shall also decide which information related to this temporary work file shall be introduced in the index.

*Article 16b*

*Access to the Case Management System at national level*

1. Persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6) may only have access to :
  - a) the index, unless the national member who has decided to introduce the data in the index, expressly denied such access;
  - b) temporary work files opened or managed by the national member of their Member State ;
  - c) temporary work files opened or managed by national members of other Member States and for which the national member of their Member States has received access to unless the national member who opened or manages the temporary work file expressly denied such access.
2. The national member shall, within the limitations provided for in paragraph 1, decide on the extent of access to the temporary work files which is granted in his or her Member State to persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6).
3. Each Member State shall decide after consultation with the national member on the extent of access to the Index which is granted in his or her Member State to persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6). Member States shall notify Eurojust and the Council General Secretariat of their decision regarding the implementation of this paragraph so that the latter can inform the other Member States.

However, persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6) shall at least have access to the Index in so far as necessary to access the temporary work files to which they have been granted access in accordance with paragraph 2.

4. Eurojust shall report to the Council and the Commission on the implementation of paragraph 3 four years after the entry into force of this Decision. Each Member State shall consider, on the basis of this report, the opportunity to review the extent of access provided in accordance with paragraph 3.

*Article 17*

*Data Protection Officer*

1. Eurojust shall have a specially appointed Data Protection Officer, who shall be a member of the staff. Within that framework, he or she shall be under the direct authority of the College. In the performance of the duties referred to in this article, he shall act independently.
2. The Data Protection Officer shall in particular have the following tasks:
  - (a) ensuring, in an independent manner, lawfulness and compliance with the provisions of this Decision concerning the processing of personal data;
  - (b) ensuring that a written record of the transmission and receipt, for the purposes of Art.19(3) in particular, of personal data is kept in accordance with the provisions to be laid down in the rules of procedure, under the security conditions laid down in Art. 22;
  - (c) ensuring that data subjects are informed of their rights under this Decision at their request.
3. In the performance of his tasks, the Data Protection Officer shall have access to all the data processed by Eurojust and to all Eurojust premises.
4. When he finds that in his view processing has not complied with this Decision, the Data Protection Officer shall:
  - (a) inform the College, which shall acknowledge receipt of the information;
  - (b) refer the matter to the JSB if the College has not resolved the non-compliance of the processing within a reasonable time.

## *Article 18*

### *Authorised access to personal data*

Only national members, their deputies and their assistants referred to in Article 2(1a), persons referred to in Article 12(2) in so far as they are connected to the Case Management System in accordance with Article 12(6) and authorised Eurojust staff may, for the purpose of achieving Eurojust's objectives and within the limits provided for in Articles 16 to 16b, have access to personal data processed by Eurojust.

## *Article 19*

### *Right of access to personal data*

1. Every individual shall be entitled to have access to personal data concerning him processed by Eurojust under the conditions laid down in this article.
2. Any individual wishing to exercise his right to have access to data concerning him which are stored at Eurojust, or to have them checked in accordance with Art. 20, may make a request to that effect free of charge in the Member State of his choice, to the authority appointed for that purpose in that Member State, and that authority shall refer it to Eurojust without delay.
3. The right of any individual to have access to personal data concerning him or to have them checked shall be exercised in accordance with the laws and procedures of the Member State in which the individual has made his request. If, however, Eurojust can ascertain which authority in a State transmitted the data in question, that authority may require that the right of access be exercised in accordance with the rules of the law of that Member State.

4. Access to personal data shall be denied if :
  - (a) such access may jeopardise one of Eurojust's activities;
  - (b) such access may jeopardise any national investigation;
  - (c) such access may jeopardise the rights and freedoms of third parties.
5. The decision to grant this right of access shall take due account of the status, with regard to the data stored by Eurojust, of those individuals submitting the request.
6. The national members concerned by the request shall deal with it and reach a decision on Eurojust's behalf. The request shall be dealt with in full within three months of receipt. Where the members are not in agreement, they shall refer the matter to the College, which shall take its decision on the request by a two-thirds majority.
7. If access is denied or if no personal data concerning the applicant are processed by Eurojust, the latter shall notify the applicant that it has carried out checks, without giving any information which could reveal whether or not the applicant is known.
8. If the applicant is not satisfied with the reply given to his request, he may appeal against that decision before the JSB. The JSB shall examine whether or not the decision taken by Eurojust is in conformity with this Decision.
9. The competent law enforcement authorities of the Member States shall be consulted by Eurojust before a decision is taken. They shall subsequently be notified of its contents through the national members concerned.

## *Article 20*

### *Correction and deletion of personal data*

1. In accordance with Art. 19(3), every individual shall be entitled to ask Eurojust to correct, block or delete data concerning him if they are incorrect or incomplete or if their input or storage contravenes this Decision.
2. Eurojust shall notify the applicant if it corrects, blocks or deletes the data concerning him. If the applicant is not satisfied with Eurojust's reply, he may refer the matter to the JSB within thirty days of receiving Eurojust's decision.
3. At the request of a MS's competent authorities, national member or national correspondent and under their responsibility, Eurojust shall, in accordance with its rules of procedure, correct or delete personal data being processed by Eurojust which were transmitted or entered by that Member State, its national member or its national correspondent. The Member States' competent authorities and Eurojust, including the national member or national correspondent shall in this context ensure that the principles laid down in Art. 14(2) and (3) and in Art.15(4) are complied with.
4. If it emerges that personal data processed by Eurojust are incorrect or incomplete or that their input or storage contravenes the provisions of this Decision, Eurojust shall block, correct or delete such data.
5. In the cases referred to in §3 and 4, all the suppliers and addressees of such data shall be notified immediately. In accordance with the rules applicable to them, the addressees, shall then correct, block or delete those data in their own systems.

*Article 21*

*Time limits for the storage of personal data*

1. Personal data processed by Eurojust shall be stored by Eurojust for only as long as is necessary for the achievement of its objectives.
2. The personal data referred to in Art. 14(1) which have been processed by Eurojust may not be stored beyond the first applicable among the following dates:
  - (a) the date on which prosecution is barred under the statute of limitations of all the Member States concerned by the investigation and prosecutions;
  - (aa) the date on which the person has been acquitted and the decision became final;
  - (b) three years after the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecutions became final;
  - (c) the date on which Eurojust and the Member States concerned mutually established or agreed that it was no longer necessary for Eurojust to coordinate the investigation and prosecutions, unless there is an obligation to provide Eurojust with this information according to Article 13(5) and (8) or according to instruments referred to in Article 13(3);
  - (d) three years after the date on which data were transmitted according to Article 13(5) and (8) or according to instruments referred to in Article 13(3).
3. (a) Observance of the storage periods referred to in paragraph 2 shall be reviewed constantly by appropriate automated processing. Nevertheless, a review of the need to store the data shall be carried out every three years after they were entered.

- (b) When one of the storage deadlines referred to in paragraph 2(a), (b), (c) and (d) has expired, Eurojust shall review the need to store the data longer in order to enable it to achieve its objectives and it may decide by way of derogation to store those data until the following review. However, once prosecution is barred under the statute of limitation in all Member States concerned as referred to in paragraph 2(a), data may only be stored if it is necessary in order for Eurojust to provide assistance in accordance with this Decision.
- (c) Where data has been stored by way of derogation pursuant to point (b) a review of the need to store those data shall take place every three years.
4. Where a file exists containing non-automated and unstructured data, once the deadline for storage of the last item of automated data from the file has elapsed all the documents in the file shall be returned to the authority which supplied them and any copies shall be destroyed.
5. Where Eurojust has coordinated an investigation or prosecutions, the national members concerned shall inform Eurojust and the other Member States concerned of all the judicial decisions relating to the case which have become final in order, inter alia , that § 2(b) may be applied.

## *Article 22*

### *Data security*

1. Eurojust and, insofar as it is concerned by data transmitted from Eurojust, each Member State, shall, as regards the processing of personal data within the framework of this Decision, protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or any other unauthorised form of processing.
2. The rules of procedure shall contain the technical measures and the organisational arrangements needed to implement this Decision with regard to data security and in particular measures designed to:
  - (a) deny unauthorised persons access to data processing equipment used for processing personal data;
  - (b) prevent the unauthorised reading, copying, modification or removal of data media ;
  - (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data ;
  - (d) prevent the use of automated data processing systems by unauthorised persons using data communication equipment ;
  - (e) ensure that persons authorised to use an automated data processing system only have access to the data covered by their access authorisation;
  - (f) ensure that it is possible to verify and establish to which bodies personal data are transmitted when data are communicated;
  - (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data processing systems and when and by whom the data were input ;
  - (h) prevent unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media.

*Article 23*

*Joint Supervisory Body (JSB)*

1. An independent JSB shall be established to monitor collectively the Eurojust activities referred to in Art. 14 to 22, 26, 26a and 27 in order to ensure that the processing of personal data is carried out in accordance with this Decision. In order to fulfil these tasks, the JSB shall be entitled to have full access to all files where such personal data are processed. Eurojust shall provide the JSB with all information from such files that it requests and shall assist that body in its tasks by every other means. The JSB shall meet at least once in each half year. It shall also meet within the three months following the lodging of an appeal referred to in Article 19(8) or within three months following the date when a case was referred to the JSB in accordance with Article 20(2). The JSB may also be convened by its chairman when at least two Member States so request. In order to set up the JSB, each Member State, acting in accordance with its legal system, shall appoint a judge who is not a member of Eurojust, or, if its constitutional or national system so requires a person holding an office giving him sufficient independence, for inclusion on the list of judges who may sit on the JSB as members or ad hoc judges. No such appointment shall be for less than three years. Revocation of the appointment shall be governed by the principles for removal applicable under the national law of the Member State of origin. Appointment and removal shall be communicated to both the Council General Secretariat and Eurojust.
2. The JSB shall be composed of 3 permanent members and, as provided for in §4, ad hoc judges.
3. A judge appointed by a Member State shall become a permanent member after being elected by the plenary meeting of the persons appointed by the Member States in accordance with paragraph 1, and shall remain a permanent member for three years. Elections shall be held yearly for one permanent member of the Joint Supervisory member by means of secret ballot. The Joint Supervisory Body shall be chaired by the member who is in his/her third year of mandate after elections. Permanent members may be re-elected. Appointees wishing to be elected shall present their candidacy in writing to the JSB Secretariat ten days before the meeting in which the election is to take place.

4. One or more ad hoc judges shall also have seats, but only for the duration of the examination of an appeal concerning personal data from the Member State which has appointed them.
- 4a. The JSB shall adopt in its rules of procedure measures necessary to implement paragraphs 3 and 4.
- 4b. (...)
5. The composition of the JSB shall remain the same for the duration of an appeals procedure even if the permanent members have reached the end of their term of office pursuant to § 3.
6. Each member and ad hoc judge shall be entitled to one vote. In the event of a tied vote, the chairman shall have the casting vote.
7. The JSB shall examine appeals submitted to it in accordance with Art. 19(8) and Art.20(2) and carry out controls in accordance with §1, first sub§, of this article. If the JSB considers that a decision taken by Eurojust or the processing of data by it is not compatible with this Decision, the matter shall be referred to Eurojust, which shall accept the decision of the JSB.
8. Decisions of the JSB shall be final and binding on Eurojust.
9. The persons appointed by the Member States in accordance with §1, third sub§, presided over by the chairman of the JSB, shall adopt internal rules of procedure which, for the purpose of the examination of appeals, lay down objective criteria for the appointment of the Body's members.
10. Secretariat costs shall be borne by the Eurojust budget. The secretariat of the JSB shall enjoy independence in the discharge of its function within the Eurojust secretariat. The Secretariat of the JSB may rely upon the expertise of the secretariat established by Council Decision 2000/641/JHA.
11. The members of the JSB shall be subject to the obligation of confidentiality laid down in Art. 25.
12. The JSB shall submit an annual report to the Council.

## *Article 24*

### *Liability for unauthorised or incorrect processing of data*

1. Eurojust shall be liable, in accordance with the national law of the Member State where its headquarters are situated, for any damage caused to an individual which results from unauthorised or incorrect processing of data carried out by it.
2. Complaints against Eurojust pursuant to the liability referred to in §1 shall be heard by the courts of the Member State where its headquarters are situated.
3. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual, which results from unauthorised or incorrect processing carried out by it of data which were communicated to Eurojust.

## *Article 25*

### *Confidentiality*

1. The national members, their deputies and their assistants referred to in Art. 2(2a), Eurojust staff and national correspondents and the Data Protection Officer shall be bound by an obligation of confidentiality, without prejudice to Article 2(2a)
2. The obligation of confidentiality shall apply to all persons and to all bodies called upon to work with Eurojust.
3. The obligation of confidentiality shall also apply after leaving office or employment or after the termination of the activities of the persons referred to in § 1 and 2.
4. Without prejudice to Article 2(2a), the obligation of confidentiality shall apply to all information received by Eurojust.

*Article 25a*

*Cooperation with the European Judicial Network*

*and other networks of the European Union involved in cooperation in criminal matters*

1. Eurojust and the European Judicial Network shall maintain privileged relations with each other, based on consultation and complementarity, especially between the national member, the European Judicial Network contact points of the same Member State and the national correspondents for Eurojust and the European Judicial Network. In order to ensure efficient cooperation, the following measures shall be taken :
  - (a) national members shall, on a case-by-case basis, inform the European Judicial Network contact points of all cases which they deem the Network is in a better position to deal with;
  - (b) the secretariat of the EJM shall form part of the staff of Eurojust. It shall function as a separate unit. It may draw on the administrative resources of Eurojust which are necessary for the performance of the EJM's tasks, including for covering the costs of the plenary meetings of the Network. Where plenary meetings are held at the premises of the Council in Brussels, the costs may only cover travel expenses and costs for interpretation. Where plenary meetings are held in the Member State holding the Presidency, the costs may only cover a part of the overall costs of the meeting;
  - (c) European Judicial Network contact points may be invited on a case-by-case basis to attend Eurojust meetings.
  
2. Without prejudice to Article 4(1), the secretariat of the Network for Joint Investigation Teams and of the Network set up by Decision 2002/494/JHA (war crime networks) shall form part of the staff of Eurojust. These secretariats shall function as separate units. They may draw on the administrative resources of Eurojust which are necessary for the performance of their tasks. Coordination between the secretariats will be ensured by Eurojust.

This paragraph shall apply to the secretariat of any new network set up by a decision of the Council where that decision provides that the secretariat shall be ensured by Eurojust.

3. The network set up by Council Decision ....JHA (corruption) may request that Eurojust shall provide a secretariat to the Network. If such request is made, paragraph 2 shall apply.

*Article 26*

*Relations with Community or Union related institutions, bodies and agencies*

1. Insofar as is relevant for the performance of its tasks, Eurojust may establish and maintain cooperative relations with the institutions, bodies and agencies set up by, or on the basis of, the Treaties establishing the European Communities and the Treaty on the European Union. Eurojust shall at least establish and maintain cooperative relations with:
  - (a) Europol;
  - (b) the European Anti-Fraud Office (OLAF);
  - (c) the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex);
  - (d) the Council, in particular its Joint Situation Centre.

Eurojust shall also establish and maintain cooperative relations with European Judicial Training Network.

2. Eurojust may conclude agreements or working arrangements with the entities referred to in paragraph 1. Such agreements or working arrangements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers to Eurojust. Such an agreement or working arrangement may only be concluded after consultation by Eurojust of 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 any such negotiations and the Council may draw any conclusions it sees fit.

3. Prior to the entry into force of the agreement or arrangement as referred to in paragraph 2, Eurojust may directly receive and use information, including personal data, from the entities referred to in paragraph 1, insofar as this is necessary for the legitimate performance of its tasks, and it may directly transmit information, including personal data, to such entities, insofar as this is necessary for the legitimate performance of the recipient's tasks and in accordance with the rules on data protection provided in this Decision.
4. OLAF may contribute to Eurojust's work to coordinate investigations and prosecution procedures regarding the protection of the financial interests of the Communities, either on the initiative of Eurojust or at the request of OLAF where the competent national authorities concerned do not oppose such participation.
5. For purposes of the receipt and transmission of information between Eurojust and OLAF, and without prejudice to article 9, Member States shall ensure that the national members of Eurojust shall be regarded as competent authorities of the Member States solely for the purposes of Regulation (EC) No 1073/1999 and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF). The exchange of information between OLAF and national members shall be without prejudice to the information which must be given to other competent authorities under these regulations.

*Article 26a*

*Relations with third States and organisations*

1. Insofar as is required for the performance of its tasks, Eurojust may also establish and maintain cooperative relations with:
  - (a) third States;
  - (b) organisations such as:
    - international organisations and their subordinate bodies governed by public law;
    - other bodies governed by public law which are based on an agreement between two or more States; and
    - the International Criminal Police Organisation (Interpol).
2. Eurojust may conclude agreements with the entities referred to in paragraph 1. 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 of 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 any such negotiations and the Council may draw any conclusions it sees fit.

- 2a. Agreements referred to in paragraph 2 containing provisions on the exchange of personal data may only be concluded if the entity concerned is subject to the Council of Europe Convention of 28 January 1981 or after an assessment confirming the existence of an adequate level of data protection ensured by that entity.
- 2b. Agreements referred to in paragraph 2 shall include provisions on the monitoring of the implementation of the agreement, including implementation of the rules on data protection.
3. Prior to the entry into force of agreements as referred to in paragraph 2, Eurojust may directly receive information, including personal data insofar as this is necessary for the legitimate performance of its tasks
4. Prior to the entry into force of the agreements as referred to in paragraph 2, Eurojust may under the conditions laid down in Article 27(1), directly transmit information, except for personal data, to these entities, insofar as this is necessary for the legitimate performance of the recipient's tasks.
5. Eurojust may under the conditions laid down in Article 27(1), transmit personal data to the entities referred to in paragraph 1, where:
  - (a) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which Eurojust is competent, and
  - (b) Eurojust has concluded an agreement as referred to in paragraph 2 with the entity concerned which has entered into force and which permits the transmission of such data.
- 5a. Any subsequent failure, or substantial likelihood of failure, on the part of the third States or entities referred to in paragraph 1 to meet the conditions referred to in paragraph 2a shall immediately be communicated by Eurojust to the JSB and the Member States concerned. The JSB may prevent the further exchange of personal data with the relevant entities until it is satisfied that adequate remedies have been provided.

6. However, even if the conditions referred to in paragraph 5 are not fulfilled, a national member may, acting in his national capacity and in conformity with the provisions of his own national law, by way of exception and with the sole aim of taking urgent measures to counter imminent serious danger threatening a person or public security, carry out an exchange of information involving personal data. The national member shall be responsible for the legality of authorising the communication. The national member shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorised only if the recipient gives an undertaking that the data will be used only for the purpose for which it was communicated.

### *Article 27*

#### *Transmission of data*

1. Before Eurojust exchanges any information with the entities referred to in Article 26a, the national member of the Member State which submitted the information shall give his consent to the transfer of that information. In appropriate cases the national member shall consult the competent authorities of the Member States.
2. Eurojust shall be responsible for the legality of the transmission of data. Eurojust shall keep a record of all transmissions of data under Articles 26 and 26a and of the grounds for such transmissions. Data shall only be transmitted if the recipient gives an undertaking that the data will be used only for the purpose for which it was transmitted.

*Article 27a*

*Liaison Magistrates posted to third states*

1. For the purpose of facilitating judicial cooperation with third States in cases in which Eurojust is providing assistance in accordance with this Decision, the College of Eurojust may post liaison magistrates to a third State, subject to an agreement as referred to in Article 26a with that third State. Before negotiations are entered into with a third country, the Council, acting by qualified majority, shall give its approval. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it sees fit.
  - 1a. The liaison magistrate referred to in paragraph 1 shall have had an experience of working with Eurojust and an adequate knowledge of judicial cooperation and how Eurojust operates. The posting of liaison magistrate on behalf of Eurojust shall be subject to the prior consent of the magistrate and of his Member State.
    - 1aa. Where the liaison magistrate posted by Eurojust is selected among national members, deputies or assistants :
      - (i) he or she shall be replaced in his or her function as a national member, deputy or assistant, by the Member State
      - (ii) he or she ceases to be entitled to exercise the powers granted to him in accordance with Articles 9a to 9f.
  - 1b. Without prejudice to Article 110 of Staff Regulations, the College of Eurojust shall draw up rules on the posting of liaison magistrates and adopt the necessary implementing arrangements in this respect in consultation with the Commission.

2. (...)
- 2a. The activities of liaison magistrates posted by Eurojust shall be the subject of supervision of the Joint Supervisory Body. They shall report to the College of Eurojust which shall inform the Council and the European Parliament in the annual report an appropriate manner of their activities. Liaison magistrates shall inform national members and national competent authorities of all cases concerning their Member State.
3. Competent authorities of the Member States, and liaison magistrates referred to in paragraph 1, may contact each other directly. In such cases, the liaison magistrate shall inform the national member concerned of such contacts.
4. Liaison magistrates referred to in paragraph 1 shall be connected to the Case Management System.
5. (...)
6. (...)

*Article 27b*

*Requests for judicial cooperation to and from third States*

1. Eurojust may, with the agreement of the Member States concerned, coordinate the execution of requests for judicial cooperation issued by a third State where these requests are part of the same investigation and require an execution in at least two Member States. Requests referred to in this paragraph may also be transmitted to Eurojust by a national competent authority.
2. In case of urgency and in accordance with Article 5a, the OCC may receive and process requests referred to in paragraph 1 of this Article and issued by a third State which has concluded a cooperation agreement with Eurojust.
3. (...)
4. (...)
5. Without prejudice to Article 3(2), where requests for judicial cooperation, which relate to the same investigation and require an execution in a third State, should be made, Eurojust may also, with the agreement of the Member States concerned, facilitate judicial cooperation with that third State.
6. Requests referred to in paragraphs 1, 2 and 5 may be transmitted through Eurojust if it is in conformity with the instruments applicable to the relationship between that third State and the European Union or the Member States concerned.

## Article 27c

### *Liability other than liability for unauthorised or incorrect processing of data*

1. Eurojust's contractual liability shall be governed by the law applicable to the contract in question.
2. In the case of non-contractual liability, Eurojust shall, independently of any liability under Article 24, make good any damage caused through the fault of the College or the staff of Eurojust in the performance of their duties insofar as it may be imputed to them and regardless of the different procedures for claiming damages which exist under the law of the Member States.
3. Paragraph 2 shall also apply to damages caused through the fault of a national member, a deputy or an assistant in the performance of his or her duties. However, when he or she is acting on the basis of the powers conferred on him pursuant to Articles 9a to 9f, his Member State of origin shall reimburse to Eurojust the sums which Eurojust has paid to make good such damage.
4. The injured party shall have the right to demand that Eurojust refrain from taking, or cease, any action.
5. The national courts of the Member States competent to deal with disputes involving Eurojust's liability as referred to in this Article shall be determined by reference to Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters <sup>1</sup>.

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<sup>1</sup> OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L363, 20.12.2006, p.1).

*Article 28*

*Organisation and operation*

1. The College shall be responsible for the organisation and operation of Eurojust.
2. The College shall elect a President from among the national members and may, if it considers it necessary, elect at most two Vice-Presidents. The result of the election shall be submitted to the Council acting by qualified majority, for its approval.
3. The President shall exercise his duties on behalf of the College and under its authority, direct its work and monitor the daily management ensured by the Administrative Director. The rules of procedure shall specify the cases in which his decisions or actions shall require prior authorisation or a report to the College.
4. The term of office of the President shall be three years. He may be re-elected once. The term of office of any Vice-President(s) shall be governed by the rules of procedure.
5. Eurojust shall be assisted by a secretariat headed by an Administrative Director.
6. Eurojust shall exercise over its staff the powers devolved to the Appointing Authority. The College shall adopt appropriate rules for the implementation of this § in accordance with the rules of procedure.

## *Article 29*

### *Administrative Director*

1. The Administrative Director of Eurojust shall be appointed by two-thirds majority by the College. The College shall set up a selection board which, following a call for applications, shall establish a list of candidates from among whom the College shall choose the Administrative Director. The Commission shall be entitled to participate in the selection process and to sit in the selection board.
2. The term of office of the Administrative Director shall be five years. It may be extended once without a need for a call for applications, provided that the College so decides by a three-fourths majority and appoints the Administrative Director with the same majority.
3. The Administrative Director shall be subject to the rules and regulations applicable to officials and other servants of the European Communities.
4. The Administrative Director shall work under the authority of the College and its President, acting in accordance with Article 28(3). He may be removed from office by the College by a two-thirds majority.
5. The Administrative Director shall be responsible, under the supervision of the President, for the day-to-day administration of Eurojust and for staff management. To that end, he shall be responsible for establishing and implementing, in cooperation with the College, an effective monitoring and evaluation procedure relating to the performance of Eurojust's administration in terms of achieving its objectives. The Administrative Director shall report regularly to the College on the results of this monitoring.

### *Article 30*

#### *Staff*

1. Eurojust shall be subject to the rules and regulations applicable to the officials and other servants of the European Communities, particularly as regards their recruitment and status.
2. Eurojust staff shall consist of staff recruited according to the rules and regulations referred to in §1, taking into account all the criteria referred to in Article 27 of the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68, including their geographical distribution. They shall have the status of permanent staff or temporary staff. At the request of the Administrative Director, and in agreement with the President on behalf of the College, Community officials may be seconded to Eurojust by the Community institutions as temporary staff. Member States may second national experts to Eurojust who may also assist the national member. The College shall adopt the necessary implementing arrangements for seconded national experts.
3. Under the authority of the College the staff shall carry out its tasks bearing in mind the objectives and mandate of Eurojust, without seeking or accepting instructions from any government, organisation or person extraneous to Eurojust without prejudice to Articles 25a(1)(c) and 25a(2).

### *Article 31*

#### *Assistance with interpreting and translation*

1. The official linguistic arrangements of the Union shall apply to Eurojust proceedings.
2. The annual report to the Council, referred to in the second sub§ of Art. 32(1), shall be drawn up in the official languages of the Union institutions.

## *Article 32*

### *Informing the European Parliament, the Council and the Commission*

1. The President, on behalf of the College, shall report to the Council in writing every year on the activities and management, including budgetary management, of Eurojust.

To that end, the College shall prepare an annual report on the activities of Eurojust and on any criminal policy problems within the Union highlighted as a result of Eurojust's activities. In that report, Eurojust may also make proposals for the improvement of judicial cooperation in criminal matters.

The President shall also submit any report or any other information on the operation of Eurojust which may be required of him by the Council.

2. Each year the Presidency of the Council shall forward a report to the European Parliament on the work carried out by Eurojust and on the activities of the JSB.
3. The Commission or the Council may seek Eurojust's opinion on all draft instruments prepared under Title VI of the Treaty.

## *Article 33*

### *Finance*

1. The salaries and emoluments of the national members, the deputy and assistants referred to in Article 2(1a) shall be borne by their Member State of origin.
2. Where national members, deputies, assistants act within the framework of Eurojust's tasks, the relevant expenditure related to these activities shall be regarded as operational expenditure within the meaning of Article 41(3) of the Treaty.

## *Article 34*

### *Budget*

1. Forecasts shall be made of all Eurojust revenue and expenditure for each financial year, which shall be the same as the calendar year. Revenue and expenditure shall be entered in the budget, which shall include the establishment plan which shall be submitted to the budget authority competent for the general budget of the EU. The establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of the staff employed by Eurojust for the financial year in question.
2. Revenue and expenditure shall be balanced in the Eurojust budget.
3. Without prejudice to other resources, Eurojust revenue may include a subsidy entered in the general budget of the EU.
4. Eurojust expenditure shall include inter alia expenditure relating to interpreters and translators, expenditure on security, administrative and infrastructure expenditure, operational and rental costs, travel expenses of members of Eurojust and its staff and costs arising from contracts with third parties.

*Article 35*

*Drawing up of the budget*

1. Each year the College, on the basis of a draft drawn up by the Administrative Director, shall produce an estimate of revenue and expenditure for Eurojust for the following financial year. A draft estimate, which shall include a draft establishment plan, shall be forwarded by the College to the Commission by 10 February at the latest. The European Judicial Network and networks referred to in Article 25a(2) shall be informed on the parts related to the activities of their secretariats in due time before the forwarding of the estimate to the Commission.
2. On the basis of the estimate, the Commission shall propose in the preliminary draft general budget of the European Union the amount of the annual subsidy as well as the posts of a permanent or temporary nature and submit this proposal to the budgetary authority in accordance with Article 272 of the Treaty.
3. The budgetary authority shall authorise the appropriations for the subsidy to Eurojust and determine the posts of a permanent or temporary nature within the framework of the Staff Regulations of officials and other Servants of the European Communities.
4. Before the beginning of the financial year, the College of Eurojust shall adopt the budget, including the establishment plan referred to in Article 34(1), third sentence, on the basis of the annual subsidy and posts authorised by the budgetary authority in accordance with paragraph 3 of this Article, adjusting it to the various contributions granted to Eurojust and the funds from other sources.

*Article 36*

*Implementation of the budget and discharge*

1. The Administrative Director shall, as authorising officer, implement the Eurojust budget. He shall report to the College on the implementation of the budget.
2. By 1 March at the latest following each financial year, the accounting officer of Eurojust shall communicate the provisional accounts to the Commission's accounting officer and the Court of Auditors together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the general Financial Regulation.
3. Eurojust shall send the report on the budgetary and financial management for the financial year to the European Parliament and the Council by 31 March of the following year by the latest.
4. On receipt of the Court of Auditors' observations on Eurojust's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Administrative Director shall draw up Eurojust's final accounts under his own responsibility and submit them to the College of Eurojust for an opinion.
5. The College of Eurojust shall deliver an opinion on Eurojust's final accounts.
6. The Administrative Director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the College of Eurojust's opinion.
7. The final accounts shall be published.
8. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the College of Eurojust.

9. The Administrative Director, acting under the authority of the College of Eurojust and its President, shall submit to the European Parliament at the latter's request any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.
10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 15 May of year N + 2, give a discharge to the Administrative Director in respect of the implementation of the budget for year N.

#### *Article 37*

#### *Financial regulation applicable to the budget*

The financial rules applicable to Eurojust's budget shall be adopted unanimously by the College after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>1</sup> unless specifically required for Eurojust's operation and with the Commission's prior consent.

#### *Article 38*

#### *Audit*

1. The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.

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<sup>1</sup> OJ L 357, 31.12.2002, p. 72 with Corrigendum in OJ L 2, 7.1.2003, p. 39.

2. The College shall appoint an internal auditor who shall be responsible in particular for providing, in accordance with the relevant international standards, an assurance regarding the proper functioning of the systems and procedures for implementing the budget. The internal auditor may not be either the authorising officer or the accountant. The College may ask the Commission's internal auditor to carry out these duties.
3. The auditor shall report his findings and recommendations to Eurojust and submit a copy of the report to the Commission. Eurojust shall, in the light of the auditor's reports, take the necessary measures in response to these recommendations.
4. The rules laid down by Regulation (EC) No 1073/1999 shall apply to Eurojust. The College shall adopt the necessary implementing measures.

### *Article 39*

#### *Access to documents*

On the basis of a proposal by the Administrative Director, the College shall adopt rules for access to Eurojust documents, taking account of the principles and limits stated in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

### *Article 39a*

#### *EU classified information*

Eurojust shall apply the security principles and minimum standards set out in Council Decision 2001/264/EC of 19 March 2001 adopting the Council's security regulations <sup>1</sup> in the management of EU classified information.

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<sup>1</sup> OJ L 101, 11.4.2001, p. 1. Decision last amended by Decision 2007/438/EC (OJ L 164, 26.6.2007, p. 24).

*Article 40*

*Territorial application*

This Decision shall apply to Gibraltar, which shall be represented by the national member for the United Kingdom.

*Article 41*

*Reporting*

1. Member States shall inform Eurojust and the General Secretariat of the Council of the designation of national members, deputies, assistants as well as persons referred to in Article 12(1) and (2) and of any change to this designation. The General Secretariat shall keep an updated list of these persons and shall make their names and contact details available to all Member States and to the Commission.
2. (...)
3. The definitive appointment of a national member can not take effect before the day on which the General Secretariat of the Council receives the official notifications referred to in paragraph 1 and Article 9a(3).

*Article 41a*

*Evaluation<sup>1</sup>*

1. Within five years after this Decision applies and every five years thereafter, the College shall commission an independent external evaluation of the implementation of this Decision as well as of the activities carried out by Eurojust.

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<sup>1</sup> References to “this Decision” will be reviewed in the jurist/linguist version.

2. Each evaluation shall assess the impact of this Decision, Eurojust's performance in terms of achieving the objectives referred to in this Decision as well as the effectiveness and efficiency of Eurojust. The College shall issue specific terms of reference in consultation with the Commission.
3. The evaluation report shall include the evaluation findings and recommendations. This report shall be forwarded to the Commission, the European Parliament and the Council and shall be made public.

*Article 42*

*Transposition*

1. If necessary the Member States shall bring their national law into conformity with this Decision at the earliest opportunity and in any case no later than .... 200\*<sup>1, 2</sup>.
2. The Commission shall at regular intervals examine the implementation by the Member States of this Decision and shall submit a report thereon to the Council and to the European Parliament together with, if appropriate, necessary proposals to improve judicial cooperation and the functioning of Eurojust. This shall in particular apply to Eurojust's capacities to support Member States in fighting terrorism.

*Article 43*

*Entry into force*

This Decision shall enter into force on the day of its publication in the Official Journal of the EU.

Done at Brussels

For the Council

*The President*

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<sup>1</sup> 2 years after the entry into force.

<sup>2</sup> This paragraph will be finalised once this instrument is transferred back into formal amendments to the Eurojust Decision of 2002.

**List referred to in Article 13(9) setting out the minimum types of information to be transmitted, where available, to Eurojust pursuant to Article 13(4), 13(5) and 13(8)**

For situations referred to in Article 13(4) :

- a) *Member States concerned*<sup>1</sup>,
- b) *Type of offences concerned*,
- c) *Date of the agreement setting up the team*,
- d) *Planned duration of the team, including modification of this duration*,
- e) *Details of the leader of the team for each participating Member State*.<sup>2</sup>

For situations referred to in Article 13(5) :

- a) *Data which identify the person, group or entity that is the object of a criminal investigation or prosecution*,
- aa) *Member States directly involved*<sup>3</sup>
- b) *the offence concerned and its specific circumstances*,
- c) *data related to the requests (for or decisions on judicial cooperation including regarding instruments giving effect to the principle of mutual recognition) which are issued, including :*
  - i. *date of the request*,
  - ii. *requesting or issuing authority*,
  - iii. *requested or (...) executing authority*<sup>4</sup>,

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<sup>1</sup> PL considered that a more specific wording should be used for this point such as the following: Member State/ Member States on the territory of which a joint investigation team is to take actions.

<sup>2</sup> BE suggested to add the following point: "*Short summary of the results of the team*". It is however, noted that the information will be sent in advance of the establishment of a JIT.

<sup>3</sup> Addition following the suggestion made by COM. IN addition COM proposed to add the following point: "*Member States potentially affected by the offences (other than those directly involved)*".

<sup>4</sup> Modification made in order to align the text with the provision of the Articles, as indicated by SE.

- iv. *type of request (measures requested),*
- v. *whether or not the request has been executed, and if not on what grounds*<sup>1</sup>.

For situations referred to in Article 13(8)(a) :

- a) *Member States and competent authorities concerned,*
- b) *data which identify the person, group or entity that is the object of a criminal investigation or prosecution,*
- c) *the offence concerned and its specific circumstances.*<sup>2</sup>

For situations referred to in Article 13(8)(b) :

- a) *Member States and competent authorities concerned,*
- b) *Data which identify the person, group or entity that is the object of a criminal investigation or prosecution,*
- c) *Type of delivery*
- d) *Type of offence in connection with which the controlled delivery is carried out*<sup>3</sup>.

For situations referred to in Article 13(8)(c) :

- a) *Requesting or issuing State,*
- b) *Requested or executing State,*
- c) *Description of the difficulties.*

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<sup>1</sup> Addition suggested by BE.

<sup>2</sup> PL proposes that the following information should also be forwarded: "a proposal of the national authority concerning the decision to be taken by the Eurojust College on the conflict of jurisdiction". It is noted however, that according to Article 7 such a decision is taken independently by the College.

<sup>3</sup> Addition following a suggestion made by PL.

**This list is for information purposes only****List of forms of crime in respect of which Europol is competent, at the time of the adoption of this Decision, in accordance with Article 4(1) of Decision ....../JHA (Europol Decision) <sup>1</sup>**

Crimes explicitly listed in Article 4(1) of Decision ....../JHA (Europol):

- organised crime
- terrorism

Crimes listed in the Annex to the Europol Decision which is referred to in Article 4(1) of Decision ....../JHA:

- unlawful drug trafficking
- illegal money-laundering activities
- crime connected with nuclear and radioactive substances
- illegal immigrant smuggling
- trafficking in human beings
- motor vehicle crime
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage taking
- racism and xenophobia
- organized robbery
- illicit trafficking in cultural goods, including antiquities and works of art
- swindling and fraud
- racketeering and extortion
- counterfeiting and product piracy
- forgery of administrative documents and trafficking therein
- forgery of money and means of payment
- computer crime
- corruption
- illicit trafficking in arms, ammunition and explosives
- illicit trafficking in endangered animal species
- illicit trafficking in endangered plant species and varieties
- environmental crime
- illicit trafficking in hormonal substances and other growth promoters

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<sup>1</sup> This Annex will be modified to reflect the situation under the Europol Convention if the Europol Decision is not adopted before the Decision amending the Eurojust Decision.

With regard to the forms of crime listed in Article 4(1) of Decision ....../JHA (Europol Decision) for the purposes of that Decision :

- “crime connected with nuclear and radioactive substances” means the criminal offences listed in Article 7(1) of the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980, and relating to the nuclear and/or radioactive materials defined in Article 197 of the Euratom Treaty and Directive 80/836 Euratom of 15 July 1980;
- “illegal immigrant smuggling” means activities intended deliberately to facilitate, for financial gain, the entry into, residence or employment in the territory of the Member States of the European Union, contrary to the rules and conditions applicable in the Member States;
- “trafficking in human beings” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, the production, sale or distribution of child-pornography material, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- “motor vehicle crime” means the theft or misappropriation of motor vehicles, lorries, semi-trailers, the loads of lorries or semi-trailers, buses, motorcycles, caravans and agricultural vehicles, works vehicles, and the spare parts for such vehicles, and the receiving and concealing of such objects,
- “illegal money-laundering activities” means the criminal offences listed in Article 6(1) to (3) of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, signed at Strasbourg on 8 November 1990;
- “unlawful drug trafficking” means the criminal offences listed in Article 3(1) of the United Nations Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and in the provisions amending or replacing that Convention.

The forms of crime referred to in Article 4 of Decision ....../JHA (Europol Decision) and in the Annex to Decision ....../JHA (Europol Decision) shall be assessed by the competent national authorities in accordance with the national law of the Member States to which they belong.

STATEMENT OF THE COUNCIL AND THE COMMISSION

*It is understood that the implementation of Article 12(6) is without prejudice to regular budgetary procedures.*

STATEMENT OF THE COMMISSION

*The Commission notes that Article 28 of the Financial Regulation provides that any proposal or initiative submitted to the legislative authority by the Commission or by a Member State in conformity with the relevant provisions of the EC Treaty or the Treaty on the European Union, which may have an impact on the budget, must be accompanied by a financial statement. Only such financial statement quantifying the expenditure would enable the Commission to pronounce itself in full knowledge on the possibility to finance additional expenditure not covered by the present Eurojust decision.*

STATEMENT OF THE SECRETARY GENERAL OF THE COUNCIL/HIGH REPRESENTATIVE FOR THE COMMON FOREIGN AND SECURITY POLICY

Notwithstanding Article 25a(1)(b) of Council Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, as amended by the present Council Decision on the strengthening of Eurojust, costs for travel of participants (two per Member State) in the annual plenary meeting of the European Judicial Network to be held at the premises of the Council in Brussels and for interpretation at that meeting will, for a transitional period up till the end of 2009, be eligible to be covered under Decision 31/2008 of the Secretary General of the Council/High Representative for the Common Foreign and Security Policy concerning reimbursement of travel expenses of delegates of Council members and Decision 111/07 of the Secretary General of the Council/High Representative for the Common Foreign and Security Policy concerning interpreting for the European Council, the Council and its preparatory bodies.