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NOTE

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| From: | Presidency |
| To: | Delegations |
| No. prev. doc.: | 6643/15 |
| Subject: | Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) - EPPO related provisions (Presidency document) |

The partial general approach on the draft Eurojust Regulation agreed in March 2015 did not include any EPPO-related provisions, as the negotiations on the EPPO Regulation had not sufficiently advanced at that moment in time.

As the Presidency estimates that the draft EPPO Regulation is now close to finalisation, it considers that time is now ripe to return to the Eurojust Regulation.

Delegations are kindly invited to examine the Presidency proposal for new wording of the provisions in Article 3(1) (including a new recital 5a), Article 12(3), Article 41(1),(4),(5) and (6) and Article 49(1), as well as the other relevant provisions of the draft Eurojust Regulation.

Recitals:

(4) Since the European Public Prosecutor's Office should be established from Eurojust, this Regulation includes the provisions necessary to regulate the relations between Eurojust and the European Public Prosecutor's Office.

(5) Whilst the European Public Prosecutor's Office should have ~~exclusive~~ competence to investigate and prosecute crimes affecting the Union's financial interests, Eurojust should be able to support national authorities when they are investigating and prosecuting these forms of crime in accordance with the Regulation establishing the European Public Prosecutor's Office.

(5a) Considering the creation of the European Public Prosecutor's Office, the division of tasks between that Office and Eurojust with respect to crimes affecting the financial interests of the Union needs to be clearly established. Where the European Public Prosecutor's Office exercises its competence, Eurojust should not exercise its competence. However, Eurojust should be able to exercise its competence in such cases, where they involve both Member States participating in the establishment of the European Public Prosecutor's Office and Member States which do not. In such cases, Eurojust should act at the request of those non-participating Member States. In cases concerning crimes affecting the financial interests of the Union which involve only Member States non participating in the establishment of the European Public Prosecutor's Office, Eurojust should exercise its competence at the request of those Member States.

(10) When exercising its operational functions in relation to concrete criminal cases, at the request of competent authorities of Member States or on its own initiative, Eurojust should act either through one or more of the national members or as a College. By acting on its own initiative, Eurojust may take a more proactive role in co-ordinating cases such as supporting the national authorities in their investigations and prosecutions. This may include involving Member States who may not have initially been included in the case and discovering links between cases based on the information it receives from Europol, OLAF, the European Public Prosecutors Office and national authorities. It also allows Eurojust to produce guidelines, policy documents and casework related analyses as part of its strategic work. When acting on its own initiative it should do so in accordance with this Regulation.

(25) Eurojust should maintain cooperative relations with other Union bodies and agencies, with the European Public Prosecutor's Office, with the competent authorities of third countries as well as with international organisations, to the extent required for the accomplishment of its tasks.

Articles:

Article 3

Competence of Eurojust

1. *Eurojust's competence shall cover the forms of crime listed in Annex 1. **However, Eurojust shall not exercise its competence with regard to crimes for which the European Public Prosecutor's Office exercises its competence, except in cases also involving Member States which do not participate in the establishment of that Office and at the request of those member States. The practical details on the exercise of competence in accordance with this paragraph shall be regulated by an Arrangement.***

Article 12

Meetings of the College

3. ***Eurojust shall send the European Public Prosecutor's Office the agendas of College meetings whenever issues are discussed which are of the relevance for the exercise of the tasks of the European Public Prosecutor's Office. Eurojust shall invite the Office to participate in such meetings, without the right to vote. In those cases the relevant documents supporting the agenda shall also be provided to it.***

Article 16

Functioning of the Executive Board

7. The European Public Prosecutor shall receive the agendas of all Executive Board meetings and shall be free to participate in such meetings, without the right to vote, whenever issues are discussed which he or she considers to be of relevance for the functioning of the European Public Prosecutor's Office.
8. The European Public Prosecutor may address written opinions to the Executive Board, to which the Executive Board shall respond in writing without undue delay.

[Article 24

Case Management System, index and temporary work files

7. The Case Management System and its temporary work files shall be made available for use by the European Public Prosecutor's Office.
8. The provisions on access to the Case Management System and the temporary work files shall apply *mutatis mutandis* to the European Public Prosecutor's Office. However, the information entered into the Case Management System, temporary work files and the index by the European Public Prosecutor's Office shall not be available for access at the national level.¹

¹ Delegations are invited to reflect upon these provisions in relation to Article 36b of the draft EPPO Regulation (doc 8750/17).

Article 41

Relations with the European Public Prosecutor's Office

1. Eurojust shall establish and maintain a ~~special~~ **close** relationship with the European Public Prosecutor's Office based on ~~close~~ **mutual** cooperation **within their respective mandates** and the development of operational, administrative and management links between them as defined ~~below~~ **in this Article**. To this end, ~~the European Public Prosecutor and the President of Eurojust~~ **and the European Chief Prosecutor** shall meet on a regular basis to discuss issues of common concern.
2. Eurojust shall treat any request for support emanating from the European Public Prosecutor's Office without undue delay, and shall deal with such requests, where appropriate, as if they had been received from a national authority competent for judicial cooperation.
3. Whenever necessary, Eurojust shall make use of the Eurojust National Coordination Systems established in accordance with Article 20, as well as the relations it has established with third countries, including its liaison magistrates, in order to support the cooperation established in accordance with paragraph 1.
4. ~~The cooperation established in accordance with paragraph 1 shall entail the exchange of information, including personal data. Any data thus exchanged shall only be used for the purposes for which it was provided. Any other usage of the data shall only be allowed in as far as such usage falls within the mandate of the body receiving the data, and subject to the prior authorisation of the body which provided the data.~~
5. ~~For the purpose of identifying whether information available at Eurojust matches with information processed by the European Public Prosecutor's Office, Eurojust shall put in place a mechanism for automatic cross-checking of data entered into its Case Management System. Whenever a match is found between data entered into the Case Management System by the European Public Prosecutor's Office and data entered by Eurojust, the fact that there is a match will be communicated to both Eurojust and the European Public Prosecutor's Office, as well as the Member State which provided the data to Eurojust. In cases where the data was provided by a third party, Eurojust shall only inform that third party of the match found with the consent of the European Public Prosecutor's Office.~~

~~6. Eurojust shall designate and inform the European Public Prosecutor's Office which staff members shall be authorised to have access to the results of the cross-checking mechanism.~~

~~7. Eurojust shall support the functioning of the European Public Prosecutor's Office through services to be supplied by its staff. Such support shall in any case include:~~

~~a) technical support in the preparation of the annual budget, the programming document containing the annual and multiannual programming and the management plan;~~

~~b) technical support in staff recruitment and career management;~~

~~c) security services;~~

~~d) Information Technology services;~~

~~e) financial management, accounting and audit services;~~

~~f) any other services of common interest.~~

~~The details of the services to be provided shall be laid down in an agreement between Eurojust and the European Public Prosecutor's Office.~~

~~8. The European Public Prosecutor may address written opinions to the College, to which the College shall respond in writing without undue delay. Such written opinions shall in any case be presented whenever the College adopts the annual budget and work programme.~~

4. In operational matters, Eurojust may associate the European Public Prosecutor's Office with its activities concerning cross-border cases, including by:

a) sharing information, including personal data, on its cases in accordance with the relevant provisions in this Regulation;

b) inviting the European Public Prosecutor's Office or its competent European Prosecutors to provide support in the transmission of requests for mutual legal assistance to, and execution in, Member States taking part in the establishment of the European Public Prosecutor's Office or third countries.

- 5. Eurojust shall have indirect access on the basis of a hit/no-hit system to information in the case management system of the European Public Prosecutor's Office. Whenever a match is found between data entered into the case management system by the European Public Prosecutor's Office and data held by Eurojust, the fact that there is a match will be communicated to both Eurojust and the European Public Prosecutor's Office, as well as the Member State which provided the data to Eurojust.**
- 6. Eurojust may provide services of common interest to the European Public Prosecutor's Office. The details shall be regulated by an Arrangement.**

Article 49

Establishment of the budget

1. Each year the Administrative Director shall draw up a draft statement of estimates of Eurojust's revenue and expenditure together, for the following financial year, including the establishment plan, and send it to the Executive Board. ~~The European Public Prosecutor's Office, the European Judicial Network and other networks referred to in Article 39 shall be~~ informed on the parts related to their activities in due time before forwarding the estimate to the Commission.
