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**A5-0398/2001**

14 November 2001

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## **REPORT**

on the draft Council decision setting up Eurojust with a view to reinforcing the fight against serious organised crime  
(12727/1/2000 – C5-0514/2000 – 2000/0817(CNS))

Reconsultation

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Evelyne Gebhardt

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At its sitting of 17 May 2001 Parliament adopted the report by Evelyne Gebhardt on the setting-up of Eurojust (A5-0153/2001).

In the course of the subsequent negotiations in the Council working parties the Council amended the text substantially, necessitating a reconsultation of Parliament.

By letter of 19 October 2001 the Belgian Minister of Justice, Marc Verwilghen, forwarded to Parliament, pursuant to Article 39(2) of the EU Treaty, document 12727/1/2001 REV 1 (EUROJUST 12), dated the same day, for information.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs confirmed Evelyne Gebhardt rapporteur.

At the sitting of 6 November 2001 the President of Parliament announced that she had forwarded the draft decision to the Committee on Budgets and the Committee on Budgetary Control for their opinions (C5-0514/2001).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs considered the Council texts 11685/2/2001, REV 2, dated 20 September 2001, and 12727/1/2001, REV 1, dated 19 October 2001, and the draft report at its meetings of 15 October, 22 October and 13 November 2001.

At the last meeting it adopted the draft legislative resolution by 30 votes to 7, with 2 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Enrico Ferri; vice-chairmen; Evelyne Gebhardt, rapporteur; Mary Elizabeth Banotti, Kathelijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Adeline Hazan), Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Giuseppe Gargani (for Bernd Posselt, pursuant to Rule 153(2)), Daniel J. Hannan, Jorge Salvador Hernández Mollar, Anna Karamanou, Margot Kessler, Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Pernille Frahm), Baroness Sarah Ludford, William Francis Newton Dunn (for A.N. Other), Giuseppe Nisticò (for Hartmut Nassauer, pursuant to Rule 153(2)), Elena Ornella Paciotti, Paolo Pastorelli, Hubert Pirker, Martine Rourer (for Michael Cashman), Giacomo Santino (for Marcello Dell'Utri), Patsy Sørensen, Sérgio Sousa Pinto, Joke Swiebel, Fodé Sylla, Anna Terrón I Cusí, Maurizio Turco (for Frank Vanhecke), Gianni Vattimo and Christian Ulrik von Boetticher .

The opinion of the Committee on Budgets is attached. On 12 November 2001 the Committee on Budgetary Control decided not to deliver an opinion. The opinion of the Committee on Legal Affairs and the Internal Market of 18 November 2000 concerning the legal basis, drawn up in connection with the report on the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Council decision setting up a provisional Judicial Cooperation unit (A5-0317/2000) also applies to this report and is attached to it.

The report was tabled on 14 November 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## LEGISLATIVE PROPOSAL

### Draft Council decision setting up Eurojust with a view to reinforcing the fight against serious organised crime (12727/1/2000 – C5-0514/2000 – 2000/0817(CNS))

The proposal is amended as follows:

Council text<sup>1</sup>

Amendments by Parliament

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#### Amendment 1 Citation 1

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

Having regard to Title VI of the Treaty on European Union and in particular Articles **29**, 31 and 34(2)(c) thereof,

#### *Justification*

*Seeks to establish a parallel with Amendment 1 adopted by Parliament in the vote on the draft Council decision setting up a Provisional Judicial Cooperation Unit (A5-0317/2000 of 14 November 2000). Article 29 of the EU Treaty is referred to in Recital 1 of the decision on the provisional unit.*

#### Amendment 2 Recital 3

(3) The effective improvement of judicial cooperation between the Member States requires the immediate adoption of structural measures at European Union level to facilitate the coordination of action for investigations and prosecutions covering the territory of more than one Member State.

(3) The effective improvement of judicial cooperation between the Member States requires the immediate adoption of structural measures at European Union level to facilitate the ***optimum*** coordination of action for investigations and prosecutions covering the territory of more than one Member State, ***in full compliance with rights and fundamental freedoms. In***

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<sup>1</sup> Not yet published in the Official Journal

*particular, closer judicial cooperation at Union level must be based on the maintenance of the best possible guarantees regarding the right to a defence.*

#### *Justification*

*The word 'optimum' is intended to incorporate a qualitative element. The wording is included in Recital 1 of the Council Decision of 14 December 2000 on the setting up of a provisional unit.*

*It must be emphasised that the implementation of measures to facilitate the coordination of investigations and prosecutions at European level must not serve to undermine full compliance with constitutional principles.*

#### Amendment 3

##### Recital 4

It is desirable for Eurojust **and Europol** to establish and maintain close cooperation.

It is desirable for Eurojust **to be able** to establish and maintain close **and effective** cooperation **with its institutional partners, particularly Europol and the European Judicial Network, to avoid any duplication of effort and conflict over their respective powers.**

#### *Justification*

*The broader wording seems more suitable and effective, and takes account of the approach Parliament has already outlined in Amendment 9 to A5-0317/2000.*

Amendment 4  
Recital 4a (new)

***(4a) The judicial coordination unit Eurojust shall when collecting, processing and using personal data comply with the principles of the Council of Europe Convention of 28 January 1981 and Recommendation R 87/15 of the Council of Europe Committee of Ministers of 17 September 1987, and shall in all cases comply with the rules of the individual Member States. This shall apply to any set of personal data.***

***In addition, in cases in which personal data are exchanged, the aim shall be to ensure efficient protection of persons in connection with the processing of personal data in the Union, by means of consistency in rules and procedures applicable to activities covered by the individual legal systems. The drawing up by the European Union of basic principles to govern the protection of personal data in the field of judicial cooperation in criminal matters and cooperation between police authorities is a first step in that direction.***

*Justification*

*Parliament has already confirmed the need for uniform principles to safeguard the protection of personal data in connection with activities under the third pillar, and the Council largely agrees.*

Amendment 5  
Recital 4b (new)

***(4b) New European Union agencies such as the ‘Eurojust’ unit, which are intended to bring about close judicial cooperation between the Member States, must comply with the rules and procedures of criminal justice, particularly as regards the protection of human rights, the right to a defence and the protection of personal data.***

*Justification*

*Speaks for itself.*

Amendment 6  
Recital 5

(5) This Decision is ***without prejudice to*** existing conventions and agreements, in particular the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and also the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted by the Council on 29 May 2000.

(5) This Decision is ***entirely consistent with and represents a development of*** existing conventions and agreements, in particular the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, and also the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, adopted by the Council on 29 May 2000; ***it is intended to eliminate the difficulties that persist, in spite of the existing agreements and conventions, in connection with cross-border judicial prosecutions.***

*Justification*

*Eurojust is a continuing the work on European judicial cooperation in criminal matters. The amendment makes this clear.*

Amendment 7  
Article 2, paragraph 1, second sentence (new)

***If the police are endowed with powers equivalent to those of magistrates or public prosecutors and carries out duties which fall with the sphere of responsibility of Eurojust, the Member State may send police officers to participate in it.***

*Justification*

*The European Council has agreed that Eurojust should be composed of public prosecutors, magistrates, or police officers with equivalent powers. Police officers can participate in the work of the unit only if, under the legal system of the Member State concerned, the police also carries out duties that are the responsibility of the so-called judicial units. This is the case in some Member States where the 'parquet' is an unknown concept. This was the position already adopted by Parliament in plenary last time.*

Amendment 8  
Article 4, paragraph 1, subparagraph (b)

(b) to improve cooperation between the competent national authorities of the Member States, in particular by ***facilitating*** the execution of international mutual legal assistance ***and*** the implementation of extradition requests;

(b) to improve cooperation between the competent national authorities of the Member States, in particular by ***efforts to facilitate*** the execution of international mutual legal assistance, the implementation of extradition requests, ***the mutual recognition of court judgments in the field of criminal law and the more widespread use of modern technologies;***

*Justification*

*Self-explanatory.*

Amendment 9  
Article 5, paragraph 1, subparagraph (b)(new)

**- terrorist acts;**

*Justification*

*Terrorist acts are not necessarily carried out in the context of a criminal organisation. For that reason, and in the light of the events of 11 September 2001, explicit reference should be made to this form of crime.*

Amendment 10  
Article 6, paragraph 3 (new)

***Irrespective of whether Eurojust acts pursuant to paragraph 1(a) or paragraph 1(b), it shall receive from the Member States the information from criminal records that is necessary for the fulfilment of its tasks and shall have access to the Schengen information system.***

*Justification*

*Eurojust must have access to sensitive information, since otherwise it cannot fulfil its tasks.*

Amendment 11  
Article 6a, paragraph (f)

(f) shall cooperate and consult with the European Judicial Network, which shall include making use of and contributing to the improvement of its documentary database;

(f) shall cooperate and consult with the European Judicial Network, which shall include making use of and contributing to the improvement ***and updating*** of its documentary database, ***with the aim of being capable of supplying legal and practical information and assisting the Member States' competent authorities by means of advice and research;***

*Justification*

*Intensive cooperation between Eurojust and the European Judicial Network should give rise to active, ongoing exchanges of information and experience.*

Amendment 12  
Article 6a, paragraph (i) (new)

***(i) in the areas for which it is competent, shall contribute towards simplifying and speeding up the execution of international letters rogatory, foster the mutual recognition of court judgments in the field of criminal law and generally facilitate international cooperation in compliance with the procedural rules in force;***

*Justification*

*Speaks for itself.*

Amendment 13  
Article 6b, paragraph (f)

(f) shall cooperate and consult with the European Judicial Network, which shall include making use of and contributing to the improvement of its documentary database;

(f) shall cooperate and consult with the European Judicial Network, which shall include making use of and contributing to the improvement ***and updating*** of its documentary database, ***with the aim of being capable of supplying legal and practical information and assisting the Member States' competent authorities by means of advice and research;***

*Justification*

*Efforts should be made to secure the closest possible cooperation with the European Judicial Network.*

Amendment 14  
Article 6b, paragraph (j) (new)

*(j) in the areas for which it is competent, shall contribute towards simplifying and speeding up the execution of international letters rogatory, foster the mutual recognition of court judgments in the field of criminal law and generally facilitate international cooperation in compliance with the procedural rules in force;*

*Justification*

*Speaks for itself.*

Amendment 15  
Article 7, paragraph 1

1. National members shall be subject to the national law of their Member State of origin as regards their status. The length of a national member's term of office shall be ***determined by the Member State of origin; it must allow Eurojust to operate properly.***

1. National members shall be subject to the national law of their Member State of origin as regards their status. The ***uniform*** length of a national member's term of office shall be ***four years and it shall be renewable.***

*Justification*

*If national members are to carry out Eurojust's tasks effectively, they must at least enjoy similar working conditions. Ideally, in the long term identical provisions should be laid down for all the national members.*

Amendment 16  
Article 8, paragraph 1

*Each Member State may put in place or appoint one or more national correspondents. It shall be a matter of high priority to put in place or appoint such a correspondent for terrorism matters. Relations between the national correspondent and the competent national authorities shall be governed by national law. A national correspondent shall have his place of work in the Member State which appointed him.*

**Deleted**

*Justification*

*This provision may create confusion regarding Eurojust's ability to carry out its tasks, without producing any genuine benefits. The European Judicial Network can already do much of what the proposal seeks to achieve by introducing national correspondents.*

Amendment 17  
Article 8, paragraph 2

2. *Where a Member State appoints a national correspondent, he may be a contact point of the European Judicial Network.*

2. ***The national contact points*** of the European Judicial Network ***should serve as national correspondents for Eurojust.***

*Justification*

*See justification for Amendment 16.*

Amendment 18  
Article 8, paragraph 3

***Relations between the national member and the national correspondent shall not preclude direct relations between the national member and his competent national authorities.***

**Deleted**

*(The reference to 'national correspondent(s)' should be deleted throughout the text.)*

*Justification*

*See justification for Amendment 16.*

Amendment 19  
Article 10, paragraph 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 European Convention of 28 January 1981.

***In connection with the implementation of this Decision, Eurojust and every Member State 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 European Convention of 28 January 1981 and Recommendation R 87/15 of the Council of Europe Committee of Ministers of 17 September 1987.***

*Justification*

*This article is expanded to include a reference to the agreement, a reference already made in the Parliament decision on the establishment of the provisional unit.*

Or. de

Amendment 20  
Article 10, paragraph 4

4. In accordance with this Decision, Eurojust shall establish an index of data relating to ***investigations*** and may establish temporary work files which also contain personal data.

4. In accordance with this Decision, Eurojust shall establish an index of data relating to ***procedures*** and may establish temporary work files which also contain personal data.

*Justification*

*An index of data relating to investigations normally contains detailed data of that kind. On data protection grounds, no such index should be set up.*

Amendment 21

Articles 10a – 10c – Article 13

*Does not apply to the English text*

Amendment 22

Article 10a, paragraphs 1 and 2, subparagraph (i)

(i) surname, **maiden** name, given names and any aliases or assumed names;

(i) surname, **birth** name, given names and any aliases or assumed names;

*Justification*

*The use of the term 'maiden name' implies that only women change their name when they marry.*

Amendment 23  
Article 10a, paragraph 1, subparagraph (vi)

(vi) social security numbers, **driving licences**, identification documents and passport data;

(vi) social security numbers, identification documents and passport data;

*Justification*

*Although in individual cases driving licence information may lead to an arrest, it is not one of the key items of data to which the processing of personal data should be restricted with a view to guaranteeing an appropriate level of protection for individuals.*

Amendment 24  
Article 10a, paragraph 1, subparagraph (viii)

**(viii) bank accounts and accounts with other financial institutions;**

**Deleted**

*Justification*

*The processing of information concerning bank accounts should be authorised only in exceptional cases within the meaning of Article 10a(3), since in many cases such information is not fundamental to investigations.*

Amendment 25  
Article 10a, paragraph 2, subparagraph (vi)

(vi) the 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.

(vi) the description and nature of the alleged offences, the date on which they were committed, the **crime** and the progress of the investigations.

*Justification*

*Clarification of the text.*

Amendment 26  
Article 10a, paragraph 3

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 Article 10.

The Data Protection Officer shall be informed immediately ***of*** recourse to this paragraph.

3. However, in exceptional cases, Eurojust may also, ***after adopting a reasoned decision and*** for a limited period of time, process other personal data relating to the circumstances of an offence [...] where they are ***essential*** to and included in ongoing investigations which Eurojust is helping to coordinate, provided that the processing of such specific data is in accordance with Article 10.

The Data Protection Officer shall be informed immediately ***prior to*** recourse to this paragraph. ***He may express reservations and must therefore be heard.***

*Justification*

*Eurojust must provide specific justification for its actions so as to prevent each exceptional circumstance from constituting a reason for the arbitrary processing of personal data.*

*It must be made clear that further personal data may only be processed if this is vital to an ongoing investigation. The Data Protection Officer must be able to review the assessment as to whether this condition has been met.*

Amendment 27  
Article 10a, paragraph 4

***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***

***Deleted***

*only when such data are [...] 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 under Article 10b of this Decision. Where such other data refer to witnesses or victims within the meaning of paragraph 2, the decision to process them must be taken by the College.*

#### *Justification*

*It is not clear why it should be permissible to store such a wide range of personal data on the grounds that they are 'essential'. There is an obvious danger that individuals' right to privacy may be violated through the storage of data which merely appears useful.*

#### Amendment 28

##### Article 10b, title and paragraph 1 (introduction)

Index of data relating to **investigations**

(1) In order to achieve its objectives Eurojust shall maintain an automated data file constituting an index of data relating to **investigations** in which non-personal data and data referred to in Article 10a(1)(i) to (vi), (viii), (ix) and (xi) and (2)(i) to (vi) may be stored. This index shall contain basic data intended to:

Index of data relating to **procedures**

(1) In order to achieve its objectives Eurojust shall maintain an automated data file constituting an index of data relating to **procedures** in which non-personal data and data referred to in Article 10a(1)(i) to (vi), (viii), (ix) and (xi) and (2)(i) to (vi) may be stored. This index shall contain basic data intended to:

#### *Justification*

*An index of data relating to investigations normally contains detailed data of that kind. On data protection grounds, no such index should be set up.*

#### Amendment 29

##### Article 10c, paragraph 2, subparagraph (iv) (new)

**(4) including those set out in Article 24 of Regulation (EC) No 45/2001**

*Justification*

*This amendment aims at ensuring that Eurojust's Data Protection Officer works closely with the European Data Protection Supervisor, such as the data protection officers appointed by other Community institutions and Community bodies.*

Amendment 30  
Article 11, paragraph 3

3. Access to the data shall be denied if:

- (a) such access may **jeopardise** one of Eurojust's activities;
- (b) such access may **jeopardise** any national investigation which Eurojust is assisting;
- (c) such access may **jeopardise** the rights and freedoms of third parties;

3. Access to the data shall be denied if:

- (a) such access may **thwart** one of Eurojust's activities;
- (b) such access may **endanger the success of** any national investigation which Eurojust is assisting;
- (c) such access may **lead to an infringement of** the rights and freedoms of third parties;

*Justification*

*The mere fact that an activity or investigation may be jeopardised should not be sufficient grounds for denying access to data, particularly as a brief delay can already be deemed to 'jeopardise' such activities. Instead, the criterion should be that access to data would call into question the achievement of Eurojust's objectives.*

Amendment 31  
Article 14, paragraph 1

1. Personal data processed by Eurojust shall be **stored by Eurojust only for as long as is necessary for the achievement of its objectives.**

1. Personal data processed by Eurojust shall be **deleted when it must no longer be consulted in connection with the conduct of investigations.**

*Justification*

*Change of emphasis.*

Amendment 32

Article 14, paragraph 2, subparagraph (a)

(a) the date on which prosecution is barred under the statute of limitations of the Member State where the period of limitation is longest, ***insofar as two Member States are still concerned by the investigation and prosecutions;***

(a) the date on which prosecution is barred under the statute of limitations of the Member State ***concerned by the prosecution*** where the period of limitation is longest;

*Justification*

*The time-limit on the storage of personal data cannot be contingent on the period of limitation of a Member State not concerned by the investigations. In addition, this might lead to improperly long storage periods.*

Amendment 33

Article 14, paragraph 3, subparagraph (b)

***(b) When one of the deadlines referred to in paragraph 2 is reached, Eurojust shall review the need to store the data for longer within the meaning of paragraph 1.***

***Deleted***

*Justification*

*Paragraph 2 lays down precisely those situations in which the continuing storage of personal data is certainly no longer necessary. Accordingly, there is no need to offer any scope for extending the time-limit on data storage.*

Amendment 34

Article 14, paragraph 3a

3a. A review of the personal data processed and stored by Eurojust shall be carried out every ***three*** years after the review referred

3a. A review of the personal data processed and stored by Eurojust shall be carried out every ***two*** years after the review referred to

to in paragraph 3(b) or, in the event of non-application of paragraph 3(a), after they were entered.

in paragraph 3(b) or, in the event of non-application of paragraph 3(a), after they were entered.

*Justification*

*Storing data for three years without review is too long a period, for reasons of both data protection law and effectiveness. A regular review every two years seems more appropriate.*

Amendment 35  
Article 14, paragraph 4

***4. During the review referred to in paragraph 3, Eurojust may decide on continued storage of data until the next review, if this is still necessary for the achievement of its objectives.***

***Deleted***

*Justification*

*Obviously, the purpose of the review should be to identify data that can be deleted and continue to store data necessary for Eurojust to fulfil its task.*

Amendment 36  
Article 15a, paragraph 1, second subparagraph

The Joint Supervisory Body shall meet at least once in each ***half year***. It may also be convened by its chairman when at least two Member States so request.

The Joint Supervisory Body shall meet at least once in each ***quarter***. It may also be convened by its chairman when at least two Member States so request.

*Justification*

*Quarterly meetings would seem more appropriate in view of the significance of Eurojust's tasks.*

Amendment 37  
Article 15a, paragraph 1, third subparagraph

In order to set up the Joint Supervisory Body, 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 system so requires a person holding an equivalent office giving him sufficient independence, for inclusion on the list of judges who may sit on the Joint Supervisory Body as members or ad hoc **judges**. **Such appointments shall be for not less than 18 months.** The removal of a person so appointed shall be governed by the principles and procedure for removal which apply to that person's office. The appointment shall be notified to both the Council General Secretariat and Eurojust.

In order to set up the Joint Supervisory Body, 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 system so requires a person holding an equivalent office giving him sufficient independence, for inclusion on the list of judges who may sit on the Joint Supervisory Body as **permanent** members or ad hoc **members**. The removal of a person so appointed shall be governed by the principles and procedure for removal which apply to that person's office. The appointment shall be notified to both the Council General Secretariat and Eurojust.

*(Throughout the text the term 'ad hoc judge' should be replaced by 'ad hoc member')*

*Justification*

*See justification for Amendment 38.*

Amendment 38  
Article 15a, paragraph 2

2. The Joint Supervisory Body shall be composed of **three** permanent members and, **as provided for in paragraph 4**, ad hoc **judges**.

2. The Joint Supervisory Body shall be composed of **seven** permanent members and **eight** ad hoc **members**. **The permanent members shall be appointed for a term of office of five years; the ad hoc members shall be appointed for two years, four being replaced each year under a rotation system.**

*Justification*

*A college consisting of only three permanent members would not provide the degree of stability vital to the work of the Joint Supervisory Body. A two-year term of office for the ad hoc members would seem to offer a suitable compromise between the need for stability and*

*the need to counter ingrained attitudes and inflexibility.*

Amendment 39  
Article 15a, paragraph 3

*The judge appointed by the Member State holding the Presidency of the Council of the European Union shall chair the Joint Supervisory Body.* Deleted

*The judge appointed by the Member State holding the Presidency of the Council of the European Union shall chair the Joint Supervisory Body.*

*Justification*

*Given the need for the Joint Supervisory Body to be independent, it is irrelevant which Member State holds the Council Presidency at any given juncture.*

Amendment 40  
Article 15b, paragraph 1

1. Eurojust shall be liable, *in accordance with the national law of the 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.

1. Eurojust shall be liable for any damage which results from unauthorised or incorrect processing of data carried out by it; *the governing law shall be the national law of the State in which the individual who suffered damage has his or her residence or place of abode, or, in the case of a legal person which has suffered damage, the State where its headquarters are situated.*

*Justification*

*An individual who has suffered damage should be treated as if a national authority of the Member State in which he or she is resident were liable. Cooperation at European level should have no bearing on liability issues as far as individuals who have suffered damage are concerned.*

Amendment 41  
Article 16a, paragraph 1

1. Eurojust shall establish and maintain close cooperation with Europol, in so far as is relevant for the performance of the tasks of Eurojust as set out in Article 6 and for achieving its objectives, taking account of the need to avoid duplication of efforts. The essential elements of cooperation shall be determined by an agreement to be approved by the Council, after consultation of the Joint Supervisory Body concerning the provisions on data protection.

1. Eurojust shall establish and maintain close cooperation with Europol, in so far as is relevant for the performance of the tasks of Eurojust as set out in Article 6 and for achieving its objectives, taking account of the need to avoid duplication of efforts. The essential elements of cooperation shall be determined by an agreement to be approved by the Council, after consultation of **the European Parliament and** the Joint Supervisory Body concerning the provisions on data protection.

#### *Justification*

*The practical arrangements for cooperation between Eurojust and Europol should include provision for the consultation of the European Parliament.*

#### Amendment 42 Article 16a, paragraph 4

1. Eurojust shall establish and maintain close cooperation with the European Anti-Fraud Office (OLAF). **To that end**, 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 the European Anti-Fraud Office where the competent national authorities concerned do not oppose such participation.

1. Eurojust shall establish and maintain close cooperation with the European Anti-Fraud Office (OLAF), **based on an intensive and continued exchange of information** OLAF **supports** 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 the European Anti-Fraud Office where the competent national authorities concerned do not oppose such participation.

#### *Justification*

*The objective of this amendment is to put OLAF and Eurojust on a more equal footing.*

#### Amendment 43 Article 16a, paragraph 6

Insofar as is required for the performance of

Insofar as is required for the performance of

its tasks, Eurojust may, with the approval of the Council and after consultation of the Joint Supervisory Body concerning the provisions on data protection, conclude agreements with non-member countries on cooperation between Eurojust and the competent national authorities of those countries. Such agreements may in particular contain provisions concerning the arrangements for the secondment of liaison officers or liaison magistrates to Eurojust. To resolve urgent matters, and without exchanging information concerning personal data except in the cases referred to in Article 16b(4), Eurojust may also cooperate with such authorities without an agreement.

its tasks, Eurojust may, with the approval of the Council and after consultation of **the European Parliament and** the Joint Supervisory Body concerning the provisions on data protection, conclude agreements with non-member countries on cooperation between Eurojust and the competent national authorities of those countries. Such agreements may in particular contain provisions concerning the arrangements for the secondment of liaison officers or liaison magistrates to Eurojust. To resolve urgent matters, and without exchanging information concerning personal data except in the cases referred to in Article 16b(4), Eurojust may also cooperate with such authorities without an agreement.

#### *Justification*

*In view of the highly sensitive nature of the issues relating to the protection of personal data, provision should be made for the consultation of the European Parliament in connection with agreements concerning the exchange of such data between Eurojust and third countries.*

#### Amendment 44 Article 16b, paragraph 3

An information exchange such as is referred to in paragraph 1 may, when it concerns personal data, take place only when an agreement on the exchange of information has been concluded between Eurojust and its counterpart. Such an agreement may be concluded only if the counterpart ensures a standard of data protection equivalent to the standard laid down in Council of Europe Convention No 108 of 28 January 1981 and relevant provisions on confidentiality in the exchange and processing of information are laid down in the agreement. Any such agreement between Eurojust and its counterpart shall be approved by the Council after consultation of the Joint Supervisory Body concerning the provisions on data protection before it enters into force.

An information exchange such as is referred to in paragraph 1 may, when it concerns personal data, take place only when an agreement on the exchange of information has been concluded between Eurojust and its counterpart. Such an agreement may be concluded only if the counterpart ensures a standard of data protection equivalent to the standard laid down in Council of Europe Convention No 108 of 28 January 1981 and relevant provisions on confidentiality in the exchange and processing of information are laid down in the agreement. Any such agreement between Eurojust and its counterpart shall be approved by the Council after consultation of **the European Parliament and** the Joint Supervisory Body concerning the provisions on data protection before it enters into force.

*Justification*

*In view of the highly sensitive nature of the issues relating to the protection of personal data, provision should be made for the consultation of the European Parliament.*

Amendment 45  
Article 19, paragraph -1 (new)

***The working languages of Eurojust shall be the official languages of the European Union.***

*Justification*

*See justification for Amendment 46.*

Amendment 46  
Article 19, paragraph 2

***2. The annual report to the Council, referred to in the second subparagraph of Article 20(1), shall be drawn up in the official languages of the European Union institutions.***

***2. All the reports which Eurojust is required to submit, in particular the report which it must submit to the European Parliament pursuant to Article 20(1), shall be drawn up in **all** the official languages of the European Union institutions.***

*Justification*

*This amendment takes account of the need to preserve the plurality of languages, particularly in areas such as judicial cooperation where linguistic skills are traditionally more limited. Any restriction in this area might be interpreted in practice as a hindrance discouraging greater use of Eurojust by national judicial authorities.*

Amendment 47  
Article 19, paragraph 2a (new)

***2a. When performing their tasks, national members may use the official language of the state which they represent.***

*Justification*

*In view of the significant responsibilities of national members, they must be offered the possibility of using the language of the state which they represent.*

Amendment 48  
Article 20, paragraph 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 criminal policy problems within the European Union highlighted as a result of Eurojust's activities. ***In this report, Eurojust may also draft proposals in order to improve judicial cooperation in criminal matters.***

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

The President, on behalf of the College, shall report to the Council ***and to the European Parliament*** 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 criminal policy problems within the European Union highlighted as a result of Eurojust's activities.

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

*Justification*

*The aim of the amendment is to ensure that the EP is kept fully informed about Eurojust's activities, whether through the annual reports or by means of requests for specific reports or information. The Member States must be kept informed in the same way. However, it is not clear why formal provision should be made for Eurojust to draft proposals to amend European policy in the sphere of judicial cooperation in criminal matters. This task must remain the responsibility of institutions such as the Council and the Member States, the Commission and Parliament, which exercise political responsibilities of this kind.*

Amendment 49  
Article 20, paragraph 2

***Each year the Presidency of the Council shall forward a [...] report to the European Parliament*** on the work carried out by

***The President and the national members assure that member States are fully informed*** on the work carried out by

*Justification*

*See justification for Amendment 48.*

Amendment 50  
Article 20, paragraph 2a (new)

**2a. The chairman of the Joint Supervisory Body shall submit an annual report on the work of the Joint Supervisory Body to the Council and the European Parliament.**

*Justification*

*With a view to the more effective operation of the Joint Supervisory Body, stress must be placed on its role and on the significance of its operation so as to highlight the task which it performs in protecting the personal data of EU citizens.*

Amendment 51  
Article 21c, paragraph 2

The [...] shall give a discharge to Eurojust for implementation of the budget before 30 April of next year n+2.

The **European Parliament** shall give discharge to Eurojust **on the recommendation of the Management Board of the Agency** for implementation of the budget before 30 April of year n+2.

*Justification*

*Parliament has entered EUR 3.5 m in commitments and EUR 2 m in payments in the reserve against Article B5-825. One of the conditions for releasing the reserve concerns appropriate arrangements on discharge. It should be Parliament's responsibility to give discharge.*

Amendment 52  
Article 21e, paragraph 3 (new)

***In accordance with the Interinstitutional Agreement of 25 May 1999<sup>1</sup> concerning internal investigations by the European Anti-Fraud Office, the College shall take a decision in order to facilitate the carrying out of internal investigations by OLAF.***

*Justification*

*As the operation of Eurojust will be covered by the Community budget, it is essential that OLAF is given the possibility to carry out investigations.*

Amendment 53  
Article 22b (new)

***The Court of Justice shall have jurisdiction regarding the interpretation and correct implementation of this Decision.***

*Justification*

*Self-explanatory.*

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<sup>1</sup> OJ L 136, 31.5.1999, p. 15.

## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the draft Council decision setting up Eurojust with a view to reinforcing the fight against serious organised crime (12727/1/2000 – C5-0514/2000 – 2000/0817(CNS))**

#### **(Consultation procedure - Reconsultation)**

*The European Parliament,*

- having regard to draft Council decision setting up Eurojust with a view to reinforcing the fight against serious organised crime (12727/1/2000 – C5-0514/2000<sup>1</sup>),
  - having regard to its standpoint of 17 May 2001,
  - having regard to Rules 67 and 71(2) of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Budgetary Control and the Committee on Legal Affairs and the Internal Market on the legal basis for the proposal (A5-0398/2001),
1. Approves the draft Council decision, subject to Parliament's amendments;
  2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  3. Calls for the conciliation procedure to be initiated should be Council intend to depart from the text approved by Parliament;
  4. Asks to be consulted again should the Council intend to make substantial modifications to the draft Council decision;
  5. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 243, 24.8.2000, p. 15.

## EXPLANATORY STATEMENT

### I. Reconsultation of Parliament

Parliament was first consulted on two initiatives on the setting-up of Eurojust in November 2000 when the Council forwarded the two texts to it for its opinion, pursuant to Article 39 of the EU Treaty. The texts concerned were:

- the initiative of the Federal Republic of Germany with a view to the adoption of a Council decision on setting up a Eurojust team;
- the initiative of the four Presidencies, i.e. the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium, with a view to adopting a Council decision setting up Eurojust with a view to reinforcing the fight against serious organised crime.

The rapporteur then drew up a comprehensive report (A5-0153/2001), which was adopted by Parliament at the sitting of 27 April 2001. In the subsequent negotiations the Council adopted substantial amendments to the initiatives, necessitating a reconsultation of Parliament.

### II. Success of the first report

Parliament was delighted to note that the Council has incorporated the main thrust of some of its amendments in the document which is the subject of the reconsultation (12727/01, EUROJUST 12 of 12 October 2001). This applies, in particular, to Amendment 13 from the first report, dealing with the competence of Eurojust (Article 5); Eurojust's areas of competence are defined in such a way as to encompass cross-border cases and new forms of serious crime. The Council also endorsed the proposal to incorporate into Article 5 a second paragraph stipulating that Eurojust may, at the request of a competent national authority, provide support for investigations and prosecutions outside its specified areas of competence.

In keeping with Amendment 14 from the report, provisions covering with the following matters have been incorporated into the new Article 6a, which deals with the performance of Eurojust's tasks by its national members:

- coordination between the competent authorities of the Member States concerned;
- establishment of a joint investigation team in keeping with the relevant cooperation instruments.

Further provisions from the original Amendment 14 have been incorporated in the new Article 6c, which stipulates that the authorities of a Member State must give reasons for a decision not to comply with a request submitted by Eurojust.

The new wording of Article 4(1) incorporates Parliament's Amendment 11 with minor linguistic changes. That amendment was tabled with a view to achieving a pragmatic and less formal approach to the definition of Eurojust's remit.

In addition, the rapporteur was able to withdraw Amendment 30 from the draft second report because in the meantime the Council had accepted the view that Member States should not be able to invoke their national law to deny access to personal data.

### **III. The second report**

The rapporteur is retabling all the amendments rejected by the Council, as far as this is possible in the light of the new text version on the basis of which this second report has been drawn up.

#### **(1) Eurojust's forerunners**

The rapporteur is particularly keen to see the experience gained with the Provisional Judicial Cooperation Unit, which began work on 1 March 2001, used in connection with the establishment of Eurojust. It must be emphasised that this provisional unit represented only a first step towards the implementation of the mandate issued in Tampere; for that reason, Parliament insisted that the existence of the provisional unit should not be taken as a pretext for delaying Eurojust's final establishment. Parliament continues to insist that the time-frame agreed in Tampere (adoption of the legal instrument by the end of 2001) must be complied with.

#### **(2) The establishment of Eurojust – necessary with a view to compliance with the rule of law**

The fact is that, alongside the powers allocated to Europol, the expansion of judicial cooperation in criminal matters is essential to ensure compliance with the rule of law. Eurojust must be designed in such a way that it can be regarded as the nucleus of a future European public prosecution service, strengthening the judicial side of the European Union in the field of criminal law, enforcing the conventions which have already been drawn up, but sadly not ratified, and building on the existing initiatives.

#### **(3) Legal basis**

In the rapporteur's view, Article 29 of the EU Treaty should form part of the legal basis, along with Articles 31, 31(a) and 34(2)(c). This seems to make sense in view of the powers being proposed, since this article highlights the purpose of Eurojust in providing citizens 'with a high level of safety within an area of freedom, security and justice'. In addition, Article 29 also stipulates that it is possible to combat certain areas of organised or non-organised crime by means of closer cooperation between police and judicial authorities, including Europol.

#### **(4) Cooperation with Eurojust's partners**

Cooperation with existing bodies in the field of judicial and police cooperation is very important for the success of Eurojust in fighting serious crime in the European Union. Conflicts of competence and duplication of effort must be avoided at all costs. For that reason, the rapporteur supports the Council's endeavours to define the nature of cooperation as

tightly as possible. At the same time, Eurojust and the individual bodies must be allowed enough margin for manoeuvre to ensure that they can cooperate effectively in the light of their respective legal bases and tasks.

#### (5) Collegiality and effectiveness

In the end, the Tampere European Council decided to set up Eurojust because the networking of magistrates, public prosecutors and databases was not on its own delivering a decisive improvement in judicial cooperation in criminal matters. The advantage of Eurojust lies precisely in the fact that for the first time magistrates and public prosecutors from the Member States have been brought together in a college, so that they can discuss, and where necessary take, appropriate action jointly with their colleagues from elsewhere in the Union.

For that reason, it does not make sense to set up additional national contact bodies which will have no geographical or personal link to Eurojust. The purpose of Eurojust is specifically to bring together investigations and prosecutions in the field of serious cross-border crime in a single body which can deal directly with the Member States, and vice versa. National contact bodies would only cause confusion here and hamper the flow of information and effective cooperation. The European Judicial Network can carry out the tasks laid down for them.

For the same reasons, the rapporteur is also opposed to references in the legislative text to 'the competent authorities of the Member States'. The authorities with which Eurojust deals in pursuit of its objectives should be able to respond immediately, without first being required to refer the matter to a centrally appointed authority. Experience with organised crime shows that only quick responses and procedures are likely to result in successful investigations.

#### (6) Mandate and scope

Close cooperation is essential to effective work involving quick responses and procedures. That cooperation will be provided by the collegiate body encouraging the Member States to carry out joint investigations and prosecutions. It will not only initiate and coordinate activities in the Member States, at the same time putting forward recommendations designed to optimise their effectiveness. It will also encourage the establishment of joint investigation teams. In cases in which the Member States turn down requests, they must be required to give reasons for their decision. Eurojust will also keep the Member States informed about current investigations and proceedings throughout the European Union.

In return for this support, Eurojust will require the necessary information from the Member States' criminal records and the Schengen Information System. It will also make use of existing instruments, such as the European Judicial Network's database and analyses by Europol.

#### (7) Data protection

The rapporteur regards it as particularly important that an appropriate level of protection for individuals should be guaranteed in connection with the processing of data by Eurojust. This can only be achieved if the storage of personal data is kept to a strict minimum and if data are not stored for longer than is absolutely necessary. In this connection, no distinction should be

drawn between manually or automatically processed data. Particularly strict requirements should be laid down to govern the storage of data concerning victims and witnesses.

The individual's right of access must be guaranteed and must be enforceable through the courts. The Member State which has forwarded the data to Eurojust must not be allowed to deny access by invoking its domestic laws. The objection that a person seeking information who is resident in a country with a restrictive approach to access could then obtain more information from Eurojust than from the competent national authorities should be countered by restricting the right of access to information concerning offences covered by Eurojust's area of competence (pursuant to Article 5).

All stored data should be reviewed every two years.

(8) The seat of Eurojust

If it is to fulfil its tasks Eurojust must be able to work independently, without influence being exercised by the Council or Commission. The choice of its seat can send out an early signal in that direction, whilst also demonstrating what role Eurojust should play in the area covered by judicial and police cooperation. The rapporteur therefore proposes Luxembourg as the future seat, in order not only to underline the independence of Eurojust, but also to highlight its important role in the field of justice in the European Union.

12 November 2001

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a draft Council decision setting up Eurojust  
(12727/1/2001 – C5-0514/2001 – 2000/0817(CNS))

Draftsman: Kathalijne Maria Buitenweg

### **PROCEDURE**

The Committee on Budgets appointed Kathalijne Maria Buitenweg draftsman at its meeting of 6 November 2001.

It considered the draft opinion at its meeting of 12 November 2001.

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Terence Wynn, chairman; Reimer Böge, vice-chairman; Ioannis Averoff, Carlos Costa Neves, Alexander de Roo (for Kathalijne Maria Buitenweg, pursuant to Rule 153(2)), Den Dover, James E.M. Elles, Göran Färm, Markus Ferber, Salvador Garriga Polledo, Neena Gill, Wolfgang Ilgenfritz, Anne Elisabet Jensen, Constanze Angela Krehl, Wilfried Kuckelkorn, Juan Andrés Naranjo Escobar, Paul Rübzig, Per Stenmarck, Kyösti Tapio Virrankoski, Ralf Walter and Brigitte Wenzel-Perillo.

### **SHORT JUSTIFICATION**

#### **I. Introduction**

In accordance with the conclusions of the Heads of State and Government meeting at Tampere on 15-16 October 2001, a Unit of 15 Prosecutors, judges and police officers with equivalent competence (EUROJUST) should be set up before the end of 2001. The objective of Eurojust is to facilitate the coordination and cooperation as regards serious types of crime, in particular organised crime.

Council consulted Parliament on 27 July 2000 and the latter adopted its report on 17 May 2001<sup>1</sup>. By letter of 19 October 2001, Council informed the President of Parliament that it intended to amend substantially the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium, which requires a

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<sup>1</sup> A5-0153/2001. Rapporteur Evelyn Gebhardt.

reconsultation. The Presidency has the intention of adopting the legal base at the JAI Council of 6-7 December. Therefore, it is imperative that Parliament adopts its report in the November II plenary.

At the time your rapporteur drafted this opinion, Parliament had not yet received a final text and no financial statement was submitted. Your rapporteur considers that, despite this unorthodox procedure, it is imperative that the views of the Budgets Committee are taken on board before Parliament adopts its report. Your rapporteur is basing her remarks and amendments on the provisional text submitted by Council.<sup>1</sup>

## **II. Budgetary aspects**

Members of Eurojust: the unit will be composed of one Member from each Member State and there will be 15 deputy national Members.

Staff: Eurojust will be assisted by a secretariat, headed by an Administrative Director. A provisional financial statement proposed an establishment plan of 32 staff. Article 21a stipulates that, besides revenue and expenditure, the establishment plan of the unit shall be included in the budget and therefore submitted to decisions of the budgetary authority, as is the case with the agencies. Without pre-empting future decisions on the establishment plan, this can be accepted by the Budgets Committee.

Financing: The salaries and emoluments of the national Members and assisting persons will be borne by their Member State, whereas expenditure related to the operation of the unit (operational expenditure of the Members, staff, building, technical equipment, maintenance, mission expenses, etc...) will be covered by the budget of the European Communities, except Council acting unanimously decides otherwise (in accordance with Article 41 para 3 of the Treaty).

The drawing up of the Eurojust budget: The Administrative Director will draw up a preliminary draft budget and the College shall adopt the draft budget. The Commission will then, in the context of the budgetary procedure, propose the annual subsidy for the Eurojust budget to be decided by the budgetary authority. In addition, there will be other funds and contributions made to Eurojust.

Level of appropriations: Members are reminded that the 2002 preliminary draft budget introduced Article B5-825 for Eurojust with a token entry (Heading 3 of the financial perspective). This was not modified by Council in its first reading. Parliament in its first reading entered an amount of EUR 3,5 million in Commitments and EUR 2 million in Payments in the reserve. Parliament accepted entering all Eurojust expenditure in Heading 3 ("Internal policies")<sup>2</sup>. Council, for its part, rejected Parliament's amendment and re-introduced a pm in its second reading.

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<sup>1</sup> Draft Council Decision setting up Eurojust (EUROJUST 12 - 12727/1/01 Rev 1).

<sup>2</sup> In previous documents, your rapporteur posed the question as to whether operational expenditure should be entered in Heading 3 ("internal policies") and administrative expenditure in Heading 5 ("Administrative expenditure"). The Budgets Committee concluded in its deliberations that it was acceptable to enter all expenditure in Heading 3.

### III. Matters of particular concern

Your rapporteur would like to draw the attention of Members to these three aspects:

Discharge: As mentioned above, Parliament has entered EUR 3,5 million in commitments and EUR 2 million in payments in the reserve. One of the conditions for the release of these appropriations were the arrangements for the discharge procedure. Your rapporteur takes the view that Parliament should be responsible to give discharge to Eurojust for implementation of the budget.

OLAF: Your rapporteur considers that OLAF should be in a position to carry out internal investigations in Eurojust, in accordance with the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office.

Proliferation of Data Protection instruments in the third pillar: the draft legal base stipulates that Eurojust shall appoint a Data Protection Officer (a member of the staff) who shall ensure the lawfulness of processing personal data. Specific provisions for the protection of data are contained in the draft legal base. Further arrangements are to be laid down in the rules of procedure. There is an analogy here to provisions for data protection in the first pillar also and your rapporteur has no objection to this. However, in addition, it is proposed to establish a Joint Supervisory Body. Other third pillar instruments included such a provision also (Schengen, Europol and Customs Union). However, a joint secretariat for the Joint Supervisory Bodies of the three instruments was established.<sup>1</sup> Your rapporteur takes the view that Council Decision 2000/641/JHA should be amended so as to include Eurojust also. No amendment to the draft legal base under consideration would be required.

Your rapporteur takes the view that the proliferation of data protection instruments in the third and first pillars is not tenable. In the long run, a single data protection body should have responsibility for the first pillar and all instruments in the third pillar.

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<sup>1</sup> (2000/641/JHA) Council Decision of 17 October 2000 establishing a secretariat for the joint supervisory data-protection bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement of the gradual abolition of checks at the common borders (Schengen Convention).

## AMENDMENTS

The Committee on Budgets calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1

#### Recital 4

It is desirable for Eurojust and Europol to establish and maintain close cooperation.

It is desirable for Eurojust and Europol to establish and maintain close cooperation, **and that Eurojust is included in the joint secretariat of the Joint Supervisory Bodies created under the conventions on Europol, Schengen and the Customs Union.**

#### *Justification*

*In accordance with the Committee on Budgets previous position on other third pillar instruments, the rapporteur proposes that Eurojust should be included in the joint secretariat established under the provisions on Europol, Schengen and the Customs Union.*

### Amendment 2

#### Article 21c paragraph 2

The [...] shall give a discharge to Eurojust for implementation of the budget before 30 April of year n+2.

The **European Parliament** shall give discharge to Eurojust **on the recommendation of the Management Board of the Agency** for implementation of the budget before 30 April of year n+2.

#### *Justification*

*Parliament has entered EUR 3.5 million in commitments and EUR 2 million in payments in the reserve against Article B5-825. One of the conditions for releasing the reserve concerns appropriate arrangements on discharge. Your rapporteur takes the view that it should be Parliament's responsibility to give discharge.*

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<sup>1</sup> Not yet published in OJ.

Amendment 3  
Article 21e paragraph 3 (new)

***In accordance with the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by the European Anti-Fraud Office, the College shall take a decision in order to facilitate the carrying out of internal investigations by OLAF.***

*Justification*

*As the operation of Eurojust will be covered by the Community budget, it is essential that OLAF is given the possibility to carry out investigations.*

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

(Rule 63(2) of the Rules of Procedure)

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the initiative of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium with a view to adopting a Decision setting up a Provisional Judicial Cooperation Unit

(10356/2000 - C5-0395/2000 - 2000/0816(CNS)) (report by Evelyne Gebhardt)

Letter from the committee chairman to Graham R. Watson, chairman of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

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Brussels, 18 October 2000

Dear Mr Watson,

The Committee on Legal Affairs and the Internal Market considered the above subject at its meeting of 17 October 2000.

At that meeting it adopted the following conclusions:

### *Article 1*

1. Each Member State shall assign to its Permanent Representation to the European Union a prosecutor, magistrate, or police officer of equivalent competence, to perform the liaison duties necessary to accomplish the aims and tasks referred to in paragraph 2. The fifteen members thus appointed shall meet in Brussels, supported by the infrastructures of the Council, in a formation known as the "Provisional Judicial Cooperation Unit".

2. In close cooperation with the General Secretariat of the Council and the European Judicial Network, those persons shall:

- (a) within the scope of each Member State's national legislation, help to ensure proper coordination between the competent national authorities with regard to investigations and prosecutions involving two or more Member States and requiring coordinated action;
- (b) facilitate judicial cooperation in criminal matters between the competent authorities of the Member States;
- (c) assist Member States and the Council, as necessary, with a view to the negotiation and adoption by the Council of the act establishing Eurojust.

## Article 2

This Decision shall take effect on the day of its adoption.  
It shall cease to apply on the date on which the instrument establishing Eurojust takes effect.

Done at ...

The initiative indicates Articles 31 and 34(2)c) of the Treaty on European Union as its legal basis. An amendment tabled in your committee aims at adding Article 29 of the EU Treaty to the afore-mentioned articles.

It should be noted that Article 29 taken by itself is not a legal basis. It only makes reference to, *inter alia*, Article 31 (a) to (d).

The Legal Affairs Committee therefore unanimously concluded that the legal basis indicated by the initiative is well founded and reasonable and that Article 29 of the EU Treaty should not be added as a further legal basis.<sup>1</sup>

As a matter of principle, and in order to avoid requests of this kind in the future, the Legal Affairs Committee also decided that Article 29 of the EU Treaty should never be considered as a legal basis.

Signed by

Ana PALACIO VALLELERSUNDI

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<sup>1</sup> Beysen (acting chairman), Rothley (1<sup>st</sup> vice-chairman), Wallis (rapporteur), Berenguer Fuster, Berger, Uca, Hautala, MacCormick, Koukiadis, Thors, Paciotti, Doorn, Garaud, Zappalà, Medina Ortega, Lehne, Fourtou, Zacharakis, H.P. Mayer, Lechner, Bradbourn, Pacheco Pereira.