

The Hague, 9 November 2017

Re: Urgent letter of the Joint Supervisory Body of Eurojust regarding the ongoing negotiations on the Eurojust Regulation and the related recast of Regulation (EC) 45/2001

The Joint Supervisory Body of Eurojust ("JSB") in its meeting of today has been informed about the latest developments with regard to the negotiations on the Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust) and the related recast of Regulation (EC) 45/2001.

The JSB is deeply concerned about the intention to establish the direct application of Regulation (EC) 45/2001 to the processing of all the personal data carried out by Eurojust, including the operational personal data, by introducing a general chapter (provisions of which are copied from other instruments) on the processing of operational data to be applied for all the EU JHA agencies. Such proposal is based apparently on the intention to ensure the full harmonisation throughout the EU, eliminating the fragmentation and patchwork in the area of ex 3rd pillar, as a result of the Lisbon Treaty. Nevertheless, the JSB wishes to flag that the approach "one size fits all" in the area of the judicial cooperation in criminal matters will simply not work and create even more legal uncertainty not only for Eurojust, but more importantly to the national competent authorities and the data subjects. It is important to highlight that Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation annexed to the TEU and the TFEU, recognises the specificity of personal data processing in the field of judicial cooperation in criminal matters and the free movement of such data, therefore the data protection rules in the field of judicial cooperation in criminal matters based on Article 16 TFEU may prove to be necessary because of the specific nature of these fields.

Being aware that the discussions on the draft Eurojust Regulation and the discussions on the recast of Regulation (EC) 45/2001 are closely interlinked, the JSB urges the European Commission, European Parliament and the Council to consider the following elements, taking full account of the mandate and tasks of Eurojust and the fact that all the information, Eurojust receives and processes, comes from and goes back to the national authorities:

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- to keep the specific Data Protection regime for the processing of operational data in the Eurojust Regulation and apply Regulation (EC) 45/2001 only to the administrative data (as it is now proposed in the Council's text Article 26b and it is presently in the Europol Regulation applicable from 1st May 2017). This would be by far the best option both from the operational and the Data Protection viewpoint. In fact, the Eurojust specific Data Protection regime, proposed by the Council, will not constitute a "patchwork" as all the provisions will be fully in line with the General Data Protection Regulation and the new Police Directive; they will however, be much more precise and clear.

- in any case, it is crucial that the basic elements are kept in the text of the Eurojust Regulation and not deleted as it is now proposed by the European Parliament. The JSB is worried to see the deletion of a number of key elements in practice such as Article 27 with regard to the automated/manual processing of personal data, categories of data subjects, the reference to the list of the data categories (listed in Annex II, leaving only a few references to Annex II in relation to which data cannot be contained in the index of CMS) conditions for processing of personal data for witnesses/victims, processing of special categories of data, etc. We are concerned as well as to deletion of the obligation to consult the national authorities regarding any request of access to personal data, which could negatively impact the trust of the Member States on Eurojust. It is important to have those provisions in the Eurojust Regulation as it is now in the Council's text (Articles 27, 27d, 27e, 27f). Other fundamental elements ensuring the legal certainty in terms of personal data processing such as the provisions on time limits (art 28), the right of access (art 32), the access regime to the CMS (art 30), the escalation procedure for the DPO in cases of non-compliance (paragraph included in art 31), the responsibility on Data Protection matters/liability for unauthorised or incorrect processing (art 31) as well as the data transfers provisions in art 38.4 and 38.5 must be kept in the Eurojust Regulation. These elements are crucial for the proper work of Eurojust and the trust of the Member States.

- it is of fundamental importance that, regardless of what is decided as to which rules apply to Eurojust regarding Data Protection, Eurojust keeps at least a legal basis in the Eurojust Regulation allowing to develop further Data Protection rules which could, if necessary, particularise and complement the application of Regulation (EC) 45/2001.

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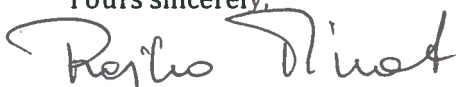
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- in the light of the experience acquired during the fourteen years of the supervisory work, the JSB wants also to emphasise the importance of ensuring the proper involvement of the national competent authorities, but also the national supervisory authorities in the work of Eurojust (as it was done in the Europol Regulation establishing the Cooperation Board (Article 45)).

Last but not least - the issue of the time of application: both Eurojust Regulation and Regulation (EC) 45/2001 should apply to Eurojust at the same time, when the Eurojust Regulation enters into force.

To sum up, the JSB strongly believes that applying entirely the revised Regulation (EC) 45/2001 to Eurojust would mean a huge step backwards from the Data Protection viewpoint, moving from clear and precise rules defining the obligations of Eurojust and the rights of individuals back to quite general rules, creating a complete legal vacuum on many questions. The Council's text of the draft Eurojust Regulation provides a far more detailed and specific regime for operational data processing, fully in line with the recently adopted Data Protection package. It would therefore ensure full coherence with the regime applicable to Eurojust's direct counterparts - the national competent authorities, applying the same standards but at the same time guaranteeing that no gaps exist hampering the operational work of Eurojust.

Yours sincerely,



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Chair

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