

III

(Preparatory Acts)

COUNCIL

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

(2008/C 54/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31 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 ⁽¹⁾ 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.
- (3) The time has come to ensure that Eurojust becomes more operational and that the status of national members are approximated.

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

- (4) The setting up of an Emergency Coordination Cell within Eurojust is necessary to make Eurojust available around the clock and enable it to intervene in urgent cases.

- (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 terrorism matters, the national correspondent for the European Judicial Network, other contact points of the European Judicial Network and representatives in the Network for Joint Investigation Teams and of the Networks set up by Council Decision 2002/494/JHA ⁽²⁾ (war crime networks), Council Decision 2007/845/JHA ⁽³⁾ (asset recovery offices) and by any forthcoming decision on a contact point network against corruption.

- (6) The issue of duplication of efforts and clarification of the division of work between Eurojust and the European Judicial Network needs to be resolved, while maintaining the specificity of the European Judicial Network. While maintaining its specificity as a network and its national and operational capacities, the European Judicial Network should be able to draw on the Community budget for operational expenses.

- (7) It is also necessary to strengthen Eurojust's capacity to work with external partners, such as third countries, Europol, OLAF and Frontex.

⁽²⁾ Council Decision of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (OJ L 167, 26.6.2002, p. 1).

⁽³⁾ Council Decision of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103).

(8) Provision should be made for Eurojust to second liaison magistrates to third countries,

2. The ECC shall be composed of one representative per Member State, who may be either the national member, his or her deputy, or an assistant entitled to replace the national member. The ECC shall be contactable and able to act on an around the clock basis.

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2002/187/JHA is hereby amended as follows:

1. in Article 2:

(a) paragraph 2 shall be replaced by the following:

'2. Each national member shall be assisted by one deputy and by another person as an assistant member. The national member or, in his absence, his deputy shall be required to have their permanent place of work at the seat of Eurojust. If necessary and with the agreement of the College referred to in Article 10, several persons may assist the national member, either as assistants or as seconded national experts under Article 30.;

(b) the following paragraphs shall be added:

'3. The deputy shall replace the national member in case of absence. An assistant may also replace the national member. To replace the national member, the deputy and the assistant shall fulfil the criteria provided for in paragraph 1.

4. Eurojust shall also be linked to a Eurojust national coordination system in accordance with Article 12. Operational expenses of this system may be covered by Eurojust's budget in accordance with Article 33.

5. Eurojust shall have the possibility of seconding liaison magistrates to third countries in accordance with the provisions of this Decision.;

2. Article 4(1) shall be replaced by the following:

'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 pursuant to Article 2 of the Europol Convention of 26 July 1995 and the Annex thereto;

(b) other offences committed together with the types of crime and the offences referred to in point (a).;

3. the following Article shall be inserted:

'Article 5a

Emergency Coordination Cell (ECC)

1. In order to fulfil its tasks on an emergency basis, Eurojust shall set up an "Emergency Coordination Cell" (ECC).

3. When in urgent cases a request for judicial cooperation needs to be executed in several Member States, the competent authority may forward it to the ECC through the representative of its Member State in the ECC. The representative of the Member State concerned in the ECC shall transmit the request to the competent authorities of the relevant Member States for execution. Where no competent national authority has been identified or it is not possible to identify it in a timely manner, the member of the ECC shall have the power to execute the request himself.

4. The representative referred to in paragraph 2 may use the powers conferred on him under Article 9a with a view to following up decisions taken in the ECC including, where applicable, the power to execute the request referred to in paragraph 3.

5. Eurojust shall take the necessary measures to ensure that national authorities can easily and at any time contact the ECC directly.;

4. Article 6 shall be replaced by the following:

'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) may, in case of partial or inadequate execution of a request for judicial assistance, ask the competent judicial authority for supplementary investigation in order for the request to be fully executed.
2. The Member States shall also ensure that competent national authorities answer without delay requests made under this Article.;
5. Article 7 shall be replaced by the following:

'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 are not in agreement on how to resolve a case of conflicts of jurisdiction as regards the undertaking of investigations or prosecution pursuant to Article 6, the College shall issue a written non-binding opinion on how the case should be solved. The opinion of the College shall be promptly forwarded to the Member States concerned.

3. Notwithstanding the provisions contained in any instruments adopted under Title VI of the Treaty, the requesting competent authorities may report to Eurojust any refusal or difficulty concerning the execution of a request for judicial cooperation and request the College to issue a written non-binding opinion on how the case should be solved. The opinion of the College shall be promptly forwarded to the Member States concerned.

4. The College may, on a request from the competent national authorities concerned and in cooperation with them, decide that the relevant expenditure of a joint investigation team 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 Framework Decision 2002/465/JHA (*) shall be regarded as operational expenditure of Eurojust within the meaning of Article 41(3) of the Treaty.

(*) OJ L 162, 20.6.2002, p. 1.;

6. Article 8 shall be replaced by:

'Article 8

Effects of decisions 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), 6(1)(g), 7(1)(a), 7(2) and 7(3), they shall inform Eurojust of their decision and of the reasons for it.;

7. in Article 9:

(a) paragraphs 1 and 2 shall be replaced by:

'1. National members shall be subject to the national law of their Member State as regards their status. The length of a national member's term of office shall be at least 4 years. The Member States 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 therefor. 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, including requests made within the framework of Article 6(1)(a) and 6(1)(g), shall be directed through the national member.;

(b) paragraph 3 shall be deleted;

(c) paragraph 4 shall be replaced by the following:

'4. In order to meet Eurojust's objectives, the national member shall have full access to:

(a) the information contained in the following registers:

- (i) national criminal records;
- (ii) registers of arrested persons;
- (iii) investigation registers;

(iv) DNA registers;

(b) registers, other than those in (a), of his Member State containing information that is necessary for him to be able to fulfil his tasks.;

(d) the following paragraph shall be inserted:

'4a. The modalities of access referred to in paragraph 4 shall at least be the same as those stipulated by national law in the case of a prosecutor, judge or police officer of equivalent competence.;

(e) paragraph 6 shall be deleted;

8. the following Article shall be inserted:

'Article 9a

Powers of the national member conferred upon him at national level

1. Each Member State shall define the nature and extent of the judicial powers it grants its national member as regards judicial cooperation in respect of that State. They shall include at least the following equivalent powers:

(a) receiving, transmitting, preparing the execution of, providing supplementary information in relation to, and monitoring the execution of, requests for judicial cooperation regarding instruments adopted under Title VI of the Treaty, including instruments giving effect to the principle of mutual recognition;

(b) preparing the setting up of, and participating in, joint investigation teams 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 Framework Decision 2002/465/JHA, as regards its own Member State, including all joint investigation teams supported by Eurojust in accordance with Article 7(4) of this Decision;

(c) performing all the tasks of competent national authorities in relation to the Analysis Work Files of Europol.

2. National members may, in their capacity as national judicial authorities, in agreement with a competent national authority or at its request and on a case-by-case basis, exercise the following delegated powers:

(a) issuing and completing requests for judicial cooperation regarding instruments adopted under Title VI of the Treaty, including instruments giving effect to the principle of mutual recognition;

- (b) ordering search and seizure measures;
- (c) authorising and coordinating controlled deliveries.

3. National members may, in urgent cases and where no competent national authority has been identified or it is not possible to identify it in a timely manner, be able to authorise and coordinate controlled deliveries.

4. The powers exercised under paragraph 1(a) shall in the first instance always be exercised by a competent national authority.

5. When the powers referred to in paragraph 1 and 3 have been exercised by a national member, the competent authority shall be informed promptly.

6. When constitutional rules regarding the division of powers between prosecutors and judges make it impossible to confer one or more of the powers referred to in paragraphs 1, 2 and 3 of this Article and in Article 5a(3) upon the national member, he shall at least be competent to issue a request to the authority competent for the carrying out of such powers.

7. 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.

8. 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 paragraphs 1 to 3 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.

9. In the performance of his tasks, a national member shall, where appropriate, make it known whether he is acting in accordance with the judicial powers granted to him under this Article.;

9. Article 10(2) shall be replaced by the following:

‘2. After consulting the Joint Supervisory Board provided for in Article 23 as regards the provisions on the processing of personal data, the Council shall approve Eurojust’s rules of procedure on a proposal from the College which has previously been adopted by a two-thirds majority by the latter. 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.’;

10. Article 12 shall be replaced by the following:

‘Article 12

Eurojust national coordination system

1. Each Member State shall designate one or more national correspondents for Eurojust.
2. Each Member State shall 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 terrorism matters;
 - (c) the national correspondent for the European Judicial Network and up to three other contact points of the European Judicial Network;
 - (d) national members or contact points of the Network for Joint Investigation Teams and of the Networks set up by Council Decision 2002/494/JHA (*) (war crime networks), Council Decision 2007/845/JHA (**) (asset recovery offices) and by any forthcoming decision on a contact point network against corruption.
3. The persons referred to in paragraphs 1 and 2 shall maintain their position and status under national law.
4. One of the national correspondents for Eurojust shall be responsible for the functioning of the Eurojust national coordination system.
5. The Eurojust national coordination system shall:
 - (a) be connected to the Case Management System of Eurojust;
 - (b) assist Eurojust in determining whether a case should be dealt with by Eurojust or the European Judicial Network;
 - (c) facilitate, within the Member State, the carrying out of the tasks of Eurojust, in particular by allowing the national member to identify proper authorities for the execution of requests for judicial cooperation;
 - (d) maintain close relations with the Europol National Unit and in particular:
 - (i) be informed and consulted on the participation of the Member State concerned in an Analysis Work File and be informed of the functioning and results of such Analysis Work Files;
 - (ii) be informed of any request of Europol to undertake an investigation or to set up a joint investigation team and to inform the Europol National Unit of such requests made by Eurojust.

6. The relations between the national member and national correspondents shall not preclude direct relations between the national member and his competent authorities.

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.

8. Expenses of the Eurojust national coordination system such as rent, equipment, telecommunications and salaries of administrative staff may be considered operational expenses of Eurojust in accordance with Article 30.

(*) Council Decision of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes (OJ L 167, 26.6.2002, p. 1).

(**) Council Decision of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103).¹

11. in Article 13:

(a) in paragraph 2:

- (i) the words 'In accordance with Article 9,' shall be deleted;
- (ii) the following sentence shall be added at the end of the paragraph: 'In particular national members who have not been informed of a case which concerns them shall be promptly informed.';

(b) the following paragraphs shall be added:

'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 on a cooperation concerning terrorist offences (*).

4. Member States shall ensure that national members are informed of the preparation 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 Framework Decision 2002/465/JHA, and of subsequent developments related to such teams.

5. Member States shall ensure that their national member is informed in a timely manner, at an early stage, and as soon as the information is available of all criminal investigations concerning three or more States, two or more of which are Member States, that fall within the remit of Eurojust and insofar as necessary for the performance of Eurojust's functions, in particular where parallel letters rogatory are needed in several States or where there is a need for coordination by Eurojust or in cases of positive or negative conflicts of jurisdiction. The Member States shall ensure that the obligation to report is supervised at national level.

6. As a first step, Member States shall implement paragraph 5 with regard to cases relating to the following offences:

- (a) trafficking in drugs;
- (b) trafficking in human beings and arms;
- (c) trafficking in nuclear waste;
- (d) trafficking in works of art;
- (e) trading in endangered species;
- (f) trading in human organs;
- (g) money laundering;
- (h) fraud, including fraud against the Community's financial interests;
- (i) counterfeiting, including of the euro;
- (j) terrorism, including financing of terrorism;
- (k) environmental crime;
- (l) other forms of organised crime.

7. Member States shall apply paragraph 5 to offences other than those referred to in paragraph 6 within three years from the date referred to in Article 2.

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

- (a) all requests for judicial cooperation regarding instruments adopted under Title VI of the Treaty, including instruments giving effect to the principle of mutual recognition, sent by their competent authorities in cases involving at least three States, two or more of which are Member States;

- (b) all controlled deliveries and undercover investigations affecting at least three States, at least two of which are Member States;
- (c) all refusals of requests for judicial cooperation regarding instruments adopted under Title VI of the Treaty, including instruments giving effect to the principle of mutual recognition;
- (d) all requests for mutual legal assistance emanating from a non-Member State where it appears that these requests are part of an investigation involving other requests sent by that non-Member State to, at least, two other Member States.

9. In addition, competent authorities shall provide the latter with any other information which the latter deems necessary to fulfil its tasks.

10. Information referred to in this Article shall be transmitted to Eurojust in a structured way.

(*) OJ L 253, 29.9.2005, p. 22.;

12. the following Article shall be inserted:

'Article 13a

Information provided by Eurojust to national authorities

1. On its own initiative 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.;

13. in Articles 14(4) and 16(1), the words 'an index of' shall be replaced by 'a Case Management System containing';

14. in Articles 15(4), 16(1) and 16(2), the word 'index' shall be replaced by 'Case Management System' and the words 'an index' in Article 16(1) by 'a Case Management System';

15. in Article 15:

(a) in paragraph 1:

(i) the first sentence shall be replaced by:

'1. When processing data in accordance with Article 14(1), Eurojust may process personal data

on persons who, under the national legislation of the Member States concerned, are the subject of a criminal investigation or prosecution for one or more of the types of crime and the offences defined in Article 4, such as:;

(ii) the following point shall be added:

'(l) telephone numbers, vehicle registration data, e-mail accounts, phone and e-mail traffic related data, DNA records and photographs.:';

(b) in paragraph 2, the word 'only' shall be deleted;

16. the following paragraph shall be inserted in Article 16:

'2a. The Case Management System shall enable data and access to be inserted at national level. 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 network referred to in Article 10 of Council Decision .../.../JHA on the European Judicial Network.'

17. the following sentence shall be added at the end of Article 23(10):

'The secretariat of the Joint Supervisory Body may rely upon the expertise of the secretariat established by Council Decision 2000/641/JHA.:';

18. in Article 26

(a) the following paragraph shall be inserted:

'1a. Member States shall ensure that the College may actually be able to open a Europol Analytical Work File and that it may participate in its functioning.:';

(b) paragraph 2 shall be replaced by the following:

'2. 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) Eurojust shall have access to centralised information from the European Judicial Network in accordance with Article 8 of Decision .../.../JHA and to the secured telecommunications network set up under Article 10 of the said Decision;

(b) without prejudice to Article 13 of this Decision and in accordance with Article 4(4) of Decision .../.../JHA, the contact points of the European Judicial Network shall, on a case-by-case basis, inform Eurojust on cases involving two Member States and entering the field of competence of Eurojust:

— in cases where conflicts of jurisdiction are likely to arise,

or

— in cases of a refusal of a request for judicial cooperation regarding instruments adopted under Title VI of the Treaty, including instruments giving effect to the principle of mutual recognition.

The contact points of the European Judicial Network shall, also on a case-by-case basis, inform Eurojust on all cases entering the field of competence of Eurojust and involving at least three Member States.

National members shall, on a case-by-case basis, inform European Judicial Network contact points on all cases with which the network is deemed to be in a better position to deal;

- (c) the secretariat of the European Judicial Network shall form part of the Eurojust secretariat. It shall function as a separate and autonomous unit. It may draw on the resources of Eurojust which are necessary for the performance of the European Judicial Network's tasks. The rules applying to Eurojust staff shall apply to the staff of the European Judicial Network's secretariat where this is not incompatible with the operational autonomy of the European Judicial Network's secretariat;
- (d) the European Judicial Network shall be supported by the Administration of Eurojust. Operational expenses of the European Judicial Network may be covered by the Eurojust budget in accordance with Article 33 of Decision .../.../JHA on the European Judicial Network;
- (e) the national members of Eurojust may attend meetings of the European Judicial Network at the invitation of the latter. European Judicial Network contact points may be invited on a case-by-case basis to attend Eurojust meetings;
- (f) the secretariat 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 any forthcoming Council decision on a contact point

network against corruption shall form part of the Eurojust secretariat and shall function as separate and autonomous units. They may draw on the resources of Eurojust which are necessary for the performance of their tasks. The rules applying to Eurojust staff shall apply to the staff of their secretariats where this is not incompatible with the operational autonomy of their secretariats; the Eurojust Administrative Director shall appoint a Secretary General, under his responsibility, of the secretariats of the Networks.;

(c) the following paragraphs shall be added:

'7. Eurojust shall establish and maintain close cooperation with the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), insofar as is relevant for the performance of the tasks of Eurojust and for achieving its objectives, taking account of the need to avoid duplication of effort. The essential elements of such 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.

8. Eurojust shall establish and maintain close cooperation with the Joint Situation Centre, insofar as is relevant for the performance of the tasks of Eurojust and for achieving its objectives, taking account of the need to avoid duplication of effort. The essential elements of such 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.

9. Eurojust shall establish and maintain close cooperation with Interpol, insofar as is relevant for the performance of the tasks of Eurojust and for achieving its objectives, taking account of the need to avoid duplication of effort. The essential elements of such 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.

10. Eurojust shall establish and maintain close cooperation with the World Customs Organisation, insofar as is relevant for the performance of the tasks of Eurojust and for achieving its objectives, taking account of the need to avoid duplication of effort. The essential elements of such 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.;

19. the following Article shall be inserted:

'Article 26a

Liaison Magistrates seconded to third States

1. For the purpose of facilitating judicial cooperation, Eurojust may second liaison magistrates to a third State, subject to an agreement with the host country which shall be approved by the Council. The liaison magistrate shall be a deputy, assistant, national member of Eurojust or a magistrate seconded to Eurojust. The secondment as liaison magistrate on behalf of Eurojust shall be subject to the prior consent of the magistrate and of his Member State.

2. The liaison magistrates seconded under paragraph 1 shall be liaison magistrates for the benefit of Eurojust and the Member States' competent authorities. The activities of liaison magistrates seconded by Eurojust shall be the subject of supervision of the Joint Supervisory Body. They shall report once every year to the College of Eurojust which shall inform the Council and the European Parliament in an appropriate manner of their activities. Liaison magistrates shall also inform national members and national competent authorities of all cases concerning their Member State.

3. National competent authorities, 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. The relevant expenditure of liaison magistrates seconded by Eurojust to a third State shall be regarded as operational expenditure within the meaning of Article 41(3) of the Treaty. Before negotiations are entered into with a third country, the Council 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.;

20. the following Articles shall be inserted:

'Article 27a

Requests for judicial cooperation from third States

1. Eurojust shall 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.

2. Requests referred to in paragraph 1 may be received directly by 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.

3. Requests referred to in paragraph 1 may also be transmitted to Eurojust by a national competent authority acting either on its own initiative or because the intervention of Eurojust was requested by the third State concerned.

4. In case of urgency, the Emergency Coordination Cell referred to in Article 5a may deal with requests referred to in paragraph 1 of this Article.

Article 27b

Liability

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 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 in the performance of his duties, except when he is acting on the basis of the powers conferred on him pursuant to Article 9a.

4. The injured party shall have the right to demand that Eurojust refrain from taking, or drop, 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 (*).

(*) OJ L 12, 16.1.2001, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).;

21. in Article 29:

(a) in paragraph 1, the word 'unanimously' shall be replaced by 'by a two-thirds majority';

(b) in paragraph 2, the second sentence 'It shall be renewable.' shall be replaced by '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.';

22. Article 32 shall be amended as follows:

— the title shall be replaced by the following:

‘Informing the European Parliament, the Council and the Commission’;

— the following paragraph shall be added:

‘3. The Commission or the Council may seek Eurojust’s opinion on all draft instruments prepared under Title VI of the Treaty.’;

23. Article 33(2) shall be replaced by:

‘2. Where national members, deputies, assistants and persons in the Eurojust national coordination system act within the framework of Eurojust’s tasks, the relevant expenditure, including that on Eurojust staff, shall be regarded as operational expenditure within the meaning of Article 41(3) of the Treaty.’;

24. the following sentence shall be added at the end of Article 35(1):

‘Before forwarding the estimate to the Commission, the European Judicial Network shall be consulted in accordance with modalities defined by it.’;

25. Article 41 shall be replaced by the following:

‘Article 41

Reporting

1. Member States shall inform Eurojust and the General Secretariat of the Council of any changes to national members, deputies and assistants as well as the names and contact details of persons referred to in Article 12(1) and (2). 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. Each Member State shall also, in accordance with Article 9a(4), when appointing its national member and at any other time if appropriate, inform Eurojust and the General Secretariat of the Council of any powers conferred on the national member in accordance with that Article.

3. The definitive appointment of a national member shall take effect on the day on which the General Secretariat of the Council receives the official notification referred to in paragraph 1.’;

26. in Article 42, the existing paragraph shall become paragraph 1 and the following paragraph shall be added:

‘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 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 2

Transposition

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 ... ⁽¹⁾.

Article 3

Entry into force

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

Done at Brussels, ...

For the Council
The President

...

⁽¹⁾ 2 years after the date of entry into force of this Decision.