

Strengthening of Eurojust. Initiative Belgium, Czech Republic, Estonia, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Sweden

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OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the Initiative of Belgium, the Czech Republic, Estonia, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia and Sweden with a view to adopting a Council Decision concerning the strengthening of Eurojust and amending Decision 2002/187/JHA.

On 27 February 2008, the Official Journal published the Initiative of 14 Member States with a view to adopting a Council Decision on the strengthening of Eurojust and amending Decision 2002/187/JHA. The EDPS was not asked for advice on this initiative. Therefore he issues this opinion on his own initiative.

The EDPS makes a number of conclusions in relation to the Initiative:

On procedure: the EDPS regrets that the Member States did not ask for his advice, since a significant part of the initiative deals with the conditions for processing of personal data by Eurojust.

On the absence of an Impact Assessment: the initiative should have been accompanied not only by an Explanatory Memorandum, but also by an Impact Assessment, which are both necessary elements enhancing the transparency and, more in general, the quality of the legislative process.

The need for improving the legal framework of Eurojust: the EDPS understands the need for improving the legal framework of Eurojust, which is a developing organisation, in order to make it more effective. He notes that:

- the amendments extend the possibilities for the processing of personal data and therefore entail additional risks for the protection of personal data;
- Eurojust exchanges information within widely varying legal systems, with different legal (and constitutional) requirements about the use of and access to this information.

The Lisbon Treaty: there are four arguments in favour of waiting for the entry into force of the Lisbon Treaty:

- it allows the full inclusion of the tasks mentioned in Article 85 of the Treaty on the Functioning of the European Union;
- it recognises the role of the European Parliament, as co-legislator and as stakeholder in the evaluation of Eurojust's activities;
- it allows the control by the Commission and the Court of Justice on the implementation in the Member States, and prevents the new provisions from profiting from the exemptions of Title VII of Protocol No 36 of the Lisbon Treaty;
- it allows considering the consequences of the abolishment of the pillar structure which might have as a consequence that Regulation (EC) No 45/2001 could be applicable to Eurojust.

On the provisions on the processing of personal data: a reference should be made to the Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters. The lists of personal data that may be processed under Article 15(1) and (2) should remain closed lists. Clarifications are also needed as to the new data elements that are added in Article 15(1)(l).

On the relations with external partners: the EDPS is opposed to the exchange of personal data between Eurojust and the World Customs Organisation. As to the relation with **Europol**, it should be considered to continue within the present arrangements, provided that:

- this will not prejudice the information position of the national members of Eurojust and of the College;
- the structural links between the two bodies are strong enough to ensure cooperation and to avoid double work.

As to the **cooperation with authorities of third countries**, it is recommended to use the present modification of the Council Decision, which further extends the scope of exchanges with third States, for laying down in the Council Decision a procedure for the assessment of adequacy.

On supervision: the EDPS welcomes the addition proposed in Article 23(10) which states that the secretariat of the Supervisory Body may rely upon the expertise of the secretariat established by the Decision 2000/641/JHA. The EDPS recommends including a provision similar to Article 38(5a) of the proposal for a Council Decision establishing the European Police Office (Europol) in order to establish that the provisions of Regulation (EC) No 45/2001 shall apply to the processing of personal data relating to Eurojust staff. Lastly, the provisions on the advisory role of the Joint Supervisory Body are welcomed and could at some points even be strengthened.