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

2008/0804(CNS) - 16/12/2008 - Final act

PURPOSE: to provide a new legal framework to strengthen Eurojust.

LEGISLATIVE ACT: Council Decision 2009/426/JHA on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

BACKGROUND: Eurojust was set up by Decision 2002/187/JHA (see CNS/2000/0817) as a body with legal personality to stimulate and improve coordination and cooperation between competent judicial authorities of the Member States. After more than 5 years, it is time to assess the experience gained by Eurojust and to further enhance its operational effectiveness by taking account of that experience. The time has come to ensure that Eurojust becomes more operational and that the status of national members is approximated.

CONTENT: this Decision, based on an initiative of Belgium, the Czech Republic, Estonia, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia and Sweden, aims to strengthen Eurojust. It covers the following main points:

Composition of Eurojust: Eurojust shall have one national member seconded by each Member State in accordance with its legal system, who is a prosecutor, judge or police officer of equivalent competence. In order to ensure continuous and effective contribution from the Member States to the achievement by Eurojust of its objectives, the national member should be required to have his regular place of work at the seat of Eurojust. The length of a national member's term of office shall be **at least four years**. The national member shall have at least equivalent access to, or at least be able to obtain the information contained in, the following types of registers of his Member State as would be available to him in his role as a prosecutor, judge or police officer, whichever is applicable, at national level: (a) criminal records; (b) registers of arrested persons; (c) investigation registers; (d) DNA registers;(e) other registers of his Member State where he deems this information necessary for him to be able to fulfil his tasks.

Moreover, it is necessary to define a **common basis of powers** which every national member should have in his capacity as a competent national authority acting in accordance with national law. Some of these powers should be granted to the national member for urgent cases where it is not possible for him to identify or to contact the competent national authority in a timely manner. It is understood that these powers will not have to be exercised in so far as it is possible to identify and to contact the competent authority.

On-Call Coordination: the setting up of an On-Call Coordination (OCC) within Eurojust is necessary to make Eurojust available around the clock and to enable it to intervene in urgent cases. It should be the responsibility of each Member State to ensure that their representatives in the OCC are able to act on a 24-hour/7-day basis. Member States should ensure that competent national authorities respond without undue delay to requests made under this Decision, even if competent national authorities refuse to comply with requests made by the national member.

Moreover, the role of the College should be enhanced in cases of conflict of jurisdiction and in cases of recurrent refusals or difficulties concerning the execution of requests for, and decisions on, judicial cooperation, including regarding instruments giving effect to the principle of mutual recognition.

Eurojust national coordination system: each Member State shall, before 4 June 2011, set up a Eurojust national coordination system. These systems should be set up in the Member States to coordinate the work carried out by: (i) the national correspondents for Eurojust; (ii) the national correspondent for Eurojust for terrorism matters; (iii) the national correspondent for the European Judicial Network and up to three other contact points of the European Judicial Network; (iv) representatives in the Networks for Joint Investigation Teams, War Crimes, Asset Recovery and Corruption.

The Eurojust national coordination system should ensure that the Case Management System receives information related to the Member State concerned in an efficient and reliable manner. However, it should not have to be responsible for actually transmitting information to Eurojust. Member States should decide on the best channel to be used for the transmission of information to Eurojust.

Exchange of information: the competent authorities of the Member States should exchange with Eurojust any information necessary for the performance of its tasks, in accordance with the rules on data protection set out in this Decision. Such information may relate to, inter alia: (i) establishing a joint investigation team; (ii) trafficking in human beings; (iii) sexual exploitation of children and child pornography; (iv) drug trafficking; (v) trafficking in firearms, their parts and components and ammunition; (vi) corruption; (vii) fraud affecting the financial interests of the European Communities; (viii) counterfeiting of the euro; (ix) money laundering; (x) attacks against information systems; (xi) other factual indications that a criminal organisation is involved or indications that the case may have a serious

cross-border dimension or repercussions at European Union level.

Measures are also provided to set a general framework applicable to the exchange of this type of information including the legal framework for: (i) access to the index and Eurojust work files; (ii) access to certain personal data.

Types of personal data which may be accessed by Eurojust: Eurojust should be authorised to process certain personal data on persons who, under the national legislation of the Member States concerned, are suspected of having committed or having taken part in a criminal offence in respect of which Eurojust is competent, or who have been convicted of such an offence. As envisaged by the European Parliament, the list of such personal data should include: (i) telephone numbers; (ii) e-mail addresses; (iii) vehicle registration data; (iv) DNA profiles established from the non-coding part of DNA; (v) photographs; and (vi) fingerprints.

The list should also include traffic data and location data and the related data necessary to identify the subscriber or user of a publicly available electronic communications service. However, this should not include data revealing the **content of the communication**. Eurojust has been given the opportunity to extend the deadlines for storage of personal data in order to achieve its objectives. Such decisions should be taken following careful consideration of particular needs.

The decision states that the transmission of information to Eurojust should be improved by providing clear and limited obligations for national authorities.

Cooperation with the European Judicial Network: Eurojust is to maintain privileged relations with the European Judicial Network based on consultation and complementarity. This Decision should help clarify the respective roles of Eurojust and the European Judicial Network and their mutual relations, while maintaining the specificity of the European Judicial Network.

Relations with third States and organisations: it is also necessary to strengthen Eurojust's capacity to work with external partners, such as third States, the European Police Office (Europol), the European Anti-Fraud Office (OLAF), the Council's Joint Situation Centre and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

Liaison magistrates: provision should be made for Eurojust to post liaison magistrates to third States in order to achieve objectives similar to those assigned to liaison magistrates seconded by the Member States on the basis of Council Joint Action 96/277/JHA concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union.

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Internal management: new measures have been added to improve the relationship between Eurojust and other similar Community agencies, in particular as regards the payment of salaries and the obligation to inform the European Parliament.

Communicating the list of members: Member States shall notify Eurojust and the General Secretariat of the Council of the designation of national members, deputies, assistants and of any change to this designation. The General Secretariat of the Council 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.

Evaluation: before 4 June 2014 and every five years thereafter, the College shall commission an independent external evaluation of the implementation of this Decision as well as of the activities carried out by Eurojust. Each evaluation shall assess the impact of this Decision, Eurojust's performance in terms of achieving its objectives as well as the effectiveness and efficiency of Eurojust. The evaluation report shall be forwarded to the European Parliament, the Council and the Commission and be made public.

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 4 June 2011. The Commission shall at regular intervals examine the implementation by the Member States of Decision 2002/187/JHA as amended and shall submit a report thereon to the European Parliament and to the Council together with, if appropriate, necessary proposals to improve judicial cooperation and the functioning of Eurojust.

Taking of effect: 04/06/2009.