Basic information

2008/0804(CNS) CNS - Consultation procedure Decision	Procedure completed
Strengthening of Eurojust. Initiative Belgium, Czech Republic, Estonia, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Sweden Amending Decision 2002/187/JHA 2000/0817(CNS) Repealed by 2013/0256(COD) **Subject** 7.30.30 Action to combat crime 7.40.04 Judicial cooperation in criminal matters 8.40.08 Agencies and bodies of the EU	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	WEBER Renate (ALDE)	27/02/2008

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2887	2008-07-24
Justice and Home Affairs (JHA)	2863	2008-04-18
Justice and Home Affairs (JHA)	2783	2008-06-05
Employment, Social Policy, Health and Consumer Affairs	2916	2008-12-16

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
13/02/2008	Legislative proposal published	05613/2008	Summary
21/02/2008	Committee referral announced in Parliament		
18/04/2008	Debate in Council		Summary
05/06/2008	Debate in Council		
24/06/2008	Vote in committee		Summary
07/07/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0293/2008	

24/07/2008	Debate in Council		Summary
01/09/2008	Debate in Parliament		
02/09/2008	Decision by Parliament	T6-0384/2008	Summary
02/09/2008	Results of vote in Parliament		
16/12/2008	Act adopted by Council after consultation of Parliament		
16/12/2008	End of procedure in Parliament		
04/06/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0804(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Amending Decision 2002/187/JHA 2000/0817(CNS) Repealed by 2013/0256(COD)
Legal basis	Treaty on European Union (after Amsterdam) M 034-p2c Treaty on European Union (after Amsterdam) M 031
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/59597

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE404.490	07/04/2008	
Amendments tabled in committee		PE405.950	21/05/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0293/2008	07/07/2008	
Text adopted by Parliament, 1st reading/single reading		T6-0384/2008	02/09/2008	Summary

Council of the EU

Document type	Reference	Date	Summary
Legislative proposal	05613/2008	13/02/2008	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	52008XX1205(01) OJ C 310 05.12.2008, p. 0001	25/04/2008	Summary

Additional information		
Source	**Document**	**Date**
European Commission	EUR-Lex	

Final act	
Decision 2009/0426 OJ L 138 04.06.2009, p. 0014	Summary
Corrigendum to final act 32009D0426R(01) OJ L 341 23.12.2010, p. 0052	

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

2008/0804(CNS) - 24/07/2008

The Council agreed on a **general approach** to a draft Decision on strengthening Eurojust.

At its meetings on 18 April and 6 June 2008, the Council had already agreed to a general approach on certain articles related:

- the composition and tasks of Eurojust,
- the status of its national members and its staff,
- on articles concerning the on-call coordination,
- the exercise of powers of national members of Eurojust,

- the Eurojust national coordination system,
- the exchange of information between Member States and national members.

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

2008/0804(CNS) - 02/09/2008 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 615 votes to 64, with 16 abstentions, the initiative of several Member States to strengthen Eurojust.

The report had been tabled for consideration in plenary by Renate **WEBER** (ALDE, RO) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

Above all, the legislative resolution calls on both the Council and the Commission to give priority to dealing with any future proposal to amend this text by urgent procedure, as set out in the Lisbon Treaty and once this treaty enters into force.

In concrete, the Parliament intended, above all, to strengthen the ‘data protection’ section of the proposal and to improve Parliament’s scrutiny of Eurojust’s tasks and roles.

The main amendments, approved under the consultation procedure, can be summarised as follows:

ECC: in terms of Eurojust’s newly created ‘Emergency Coordination Cells’ (ECC), the Parliament considers that these should be contactable via a **single contact point**; the representative of the ECC should be able to act on a 24 hours/7 days basis.

Special investigative measures: due to the lack of a clear and limited definition of ‘special investigative measures’, the Parliament removed the possibility for Eurojust to request that such measures be taken, in order to avoid any abusive interpretation of ‘special investigative measures’. The

Parliament considers that all legal investigative methods are provided for by point (i) of article 6 ('investigation and prosecution of specific acts'). The same can be said for 'other measures justified for the investigation or prosecution', which the Parliament also deleted to avoid any abuse.

Access to information: the Parliament considers it necessary to limit access to certain information. It points out that the national member of Eurojust can only access registers of his or her Member State and not registers of other Member States.

Information exchange: the Parliament specifies the types of information that can be exchanged. Firstly, 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. To the information that may be exchanged, the Parliament adds information relating to sexual exploitation of children and child pornography. In an oral amendment proposed by Evelyne **GEBHARDT** (PES, DE) the plenary also adds other forms of offences where there are factual indications that a criminal organisation or serious crimes are involved. The Parliament also specifies the information that can be exchanged in the framework of judicial cooperation. A list of the types of data that can be exchanged is therefore proposed, including: the DNA profile; photographs; telephone numbers; telephone and e-mail traffic related data excluding the transmission of content data; e-mail accounts; vehicle registration data.

An *a posteriori* reporting system: there are several amendments introduced which deal with situations when national members have used their judicial powers in urgent cases. In order to avoid any abuse of their powers, the Parliament proposes the introduction of an *a posteriori* reporting system where it should be explained why a national member could not identify a competent national authority in a timely manner. This data should also be included in annual reports of Eurojust.

Limit on the transmission of information to third countries: according to the Parliament, the transmission of personal data by Eurojust to certain entities of third States which are not subject to the Council of Europe Convention of 28 January 1981 may be effected only when an adequate and comparable level of data protection is ensured.

Data protection: the Parliament strengthened the set of provisions on data protection. It specifies that when processing data, Eurojust may process **only** the personal data on persons who, under the national legislation of the Member States concerned, are the subject of a criminal investigation or prosecution. The Parliament also considers that it is important to ensure appropriate protection of personal data for all types of personal data filing systems used by Eurojust. In this respect, the Rules of Procedure on the processing and protection of personal data at Eurojust should also apply to structured manual files, in other words, to case-related files that are compiled manually by national members or assistants and are organised in a logical way. Eurojust should also ensure that the content and titles of e-mails are not disclosed in the framework of judicial cooperation.

Remedy: the Member States shall provide an adequate judicial remedy where the investigation was carried out at the request of Eurojust on the basis of manifestly insufficient grounds.

Parliamentary supervision: the Parliament wishes to be better informed of Eurojust's activities. It therefore asks that the Joint Supervisory Body submit an annual report to the European Parliament and the Council. At the same time, once every two years the Joint Supervisory Body, together with the respective third State or entity, shall evaluate the implementation of the provisions of the relevant cooperation agreement relating to the protection of the data exchanged. The President of Eurojust, on behalf of the College, shall report every year to the European Parliament and the Council on the activities and management, including budgetary management, of Eurojust (including, for example, information on any criminal policy problems within the Union highlighted as a result of Eurojust's activities or proposals for the improvement of judicial cooperation in criminal matters). Lastly, the Commission shall at regular intervals examine the implementation by the Member States of this Decision and shall submit a report thereon to the European Parliament.

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

2008/0804(CNS) - 25/04/2008 - Document attached to the procedure

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.

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

2008/0804(CNS) - 13/02/2008 - Legislative proposal

PURPOSE: initiative of Belgium, the Czech Republic, Estonia, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia and Sweden with a view to strengthen Eurojust and amend Decision 2002/187/JHA.

PROPOSED ACT: Council Decision.

BACKGROUND: Eurojust was set up by Decision 2002/187/JHA (seeCNS/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 further to 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 proposal makes provision for the following:

- the setting up of an Emergency Coordination Cell within Eurojust in order to make Eurojust available around the clock and enable it to intervene in urgent cases. The ECC will be composed of one representative per Member State, who may be the national member, his or her deputy, or an assistant entitled to replace the national member. The ECC will be contactable and able to act on an around the clock basis;

- Eurojust national coordination systems will set up in 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 Decision 2002/494/JHA(war crime networks), Decision 2007/845/JHA (asset recovery offices) and by any forthcoming decision on a contact point network against corruption;

- the issues of duplication of efforts and clarification of the division of work between Eurojust and the European Judicial Network need 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 will be able to draw on the Community budget for operational expenses;

- Eurojust's capacity to work with external partners, such as third countries, Europol, OLAF and FRONTEX will be strengthened;

- lastly, provision will be made for Eurojust to second liaison magistrates to third countries.

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.

Provision should be made for Eurojust to post liaison magistrates to third States

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.

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

2008/0804(CNS) - 18/04/2008

Pending the withdrawal of a parliamentary scrutiny reservation, the Council adopted a **general approach** on certain aspects of a draft decision strengthening Eurojust.

In particular, the Council agreed on the articles of that proposal which relate to:

- the composition of Eurojust;
- its tasks;
- the status of its national members and its staff.

Work on the remaining provisions of the instrument will continue at expert level.

This proposal was submitted on January 2008 by Slovenia, France, the Czech Republic, Sweden, Spain, Belgium, Poland, Italy, Luxembourg, the Netherlands, Slovakia, Estonia, Austria and Portugal.