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COUNCIL DECISION

of 28 February 2002

setting up Eurojust with a view to reinforcing the fight against serious crime

(2002/187/JHA)

(OJ L 63, 6.3.2002, p. 1)

Amended by:

		Official Journal		
		No	page	date
► M1	Council Decision 2003/659/JHA of 18 June 2003	L 245	44	29.9.2003



COUNCIL DECISION

of 28 February 2002

setting up Eurojust with a view to reinforcing the fight against serious crime

(2002/187/JHA)

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 Federal Republic of Germany and to that of the Portuguese Republic, the French Republic, the Kingdom of Sweden and the Kingdom of Belgium ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) It is necessary to improve judicial cooperation between the Member States further, in particular in combating forms of serious crime often perpetrated by transnational organisations.
- (2) The effective improvement of judicial cooperation between the Member States requires the immediate adoption of structural measures at European Union level to facilitate the optimal coordination of action for investigations and prosecutions covering the territory of more than one Member State with full respect for fundamental rights and freedoms.
- (3) In order to reinforce the fight against serious organised crime, the Tampere European Council of 15 and 16 October 1999, in particular in point 46 of its conclusions, decided on the setting up of a unit (Eurojust) composed of prosecutors, magistrates or police officers of equivalent competence.
- (4) This Eurojust unit is set up by this Decision as a body of the European Union with legal personality and financed from the general budget of the European Union, except as regards the salaries and emoluments of the national members and assisting persons, which are borne by their Member State of origin.
- (5) The objectives of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) ⁽³⁾ are also relevant to Eurojust. The Eurojust College should adopt the necessary implementing measures to achieve those objectives. It should take full account of the sensitive work carried out by Eurojust in the context of investigations and prosecutions. In this connection, OLAF should be denied access to documents, evidence, reports, notes or information, in whatever form, which are held or created in the course of these activities, whether under way or already concluded, and the transmission of such documents, evidence, reports, notes and information to OLAF should be prohibited.
- (6) In order to be able to attain its objectives as efficiently as possible, Eurojust should fulfil its tasks either through one or more of its national members or acting as a College.
- (7) The competent authorities of the Member States should be able to exchange information with Eurojust in accordance with arrangements which serve and observe the interests of public service.

⁽¹⁾ OJ C 206, 19.7.2000, p. 1 and
OJ C 243, 24.8.2000, p. 15.

⁽²⁾ OJ C 34 E, 7.2.2002, p. 347 and opinion delivered on 29 November 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 136, 31.5.1999, p. 1.

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- (8) Eurojust's jurisdiction is without prejudice to the Community's competence to protect its own financial interests and is also without prejudice to existing conventions and agreements, in particular the European Convention on Mutual Assistance in Criminal Matters (Council of Europe) signed in Strasbourg on 20 April 1959, and also the Convention on Mutual Assistance on Criminal Matters between the Member States of the European Union ⁽¹⁾ adopted by the Council on 29 May 2000, and the Protocol ⁽²⁾ thereto adopted on 16 October 2001.
- (9) In order to achieve its objectives, Eurojust processes personal data by automated means or in structured manual files. Accordingly, the necessary steps should be taken to guarantee a level of data protection which corresponds at least to that which results from the application of the principles of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Council of Europe) signed in Strasbourg on 28 January 1981, together with subsequent amendments thereto, in particular the Protocol opened for signature on 8 November 2001, once such amendments are in force between the Member States.
- (10) In order to help ensure and check that personal data are processed properly by Eurojust, a joint supervisory body should be set up which, given the composition of Eurojust, should consist of a panel of judges or, if the constitutional or national system of a Member State so requires, of persons exercising an equivalent function which gives them sufficient independence. The powers of this joint supervisory body should be without prejudice to the jurisdiction of national courts or to the arrangements for any appeals which may be brought before them.
- (11) In order to ensure harmonious coordination of the various activities pursued by the Union and the Community and having regard to Article 29 and Article 36(2) of the Treaty, the Commission should be fully involved in Eurojust's proceedings concerning general questions and questions coming within its competence. Eurojust's rules of procedure should detail the arrangements for the Commission to participate in Eurojust's proceedings in areas within its jurisdiction.
- (12) Provisions should be laid down to ensure that Eurojust and the European Police Office (Europol) ⁽³⁾ establish and maintain close cooperation.
- (13) Eurojust and the European Judicial Network set up by Joint Action 98/428/JHA ⁽⁴⁾ should have a privileged relationship. To that end, the secretariat of the Network should be placed within the Eurojust secretariat.
- (14) In order to facilitate activities of Eurojust, the Member States should put in place or designate one or more national correspondents.
- (15) Insofar as is necessary for the fulfilment of its tasks, it should be possible for Eurojust to initiate cooperation with non-Member States and for agreements to be concluded to that effect, primarily with the candidate countries for accession to the Union and other countries with which arrangements have been agreed.
- (16) Since the adoption of this Decision means that major new legislative measures must be approved in the Member States, provision should be made for certain transitional provisions.
- (17) Point 57 of the Laeken European Council conclusions of 14 and 15 December 2001 provided for Eurojust to be able to begin

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ C 326, 26.11.2001, p. 2.

⁽³⁾ OJ C 316, 27.11.1995, p. 1.

⁽⁴⁾ OJ L 191, 7.7.1998, p. 4.

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operations in The Hague, pending overall agreement on the seats of certain agencies.

- (18) This Decision respects the fundamental rights and observes the principles recognised by Article 6(2) of the Treaty and reflected in the Charter of Fundamental Rights of the European Union,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment and legal personality

This Decision establishes a unit, referred to as 'Eurojust', as a body of the Union.

Eurojust shall have legal personality.

Article 2

Composition

1. Eurojust shall be composed of one national member seconded by each Member State in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence.
2. Each national member may be assisted by one person. If necessary and with the agreement of the College referred to in Article 10, several persons may assist the national member. One of these assistants may replace the national member.

Article 3

Objectives

1. In the context of investigations and prosecutions, concerning two or more Member States, of criminal behaviour referred to in Article 4 in relation to serious crime, particularly when it is organised, the objectives of Eurojust shall be:
 - (a) to stimulate and improve the coordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States, taking into account any request emanating from a competent authority of a Member State and any information provided by any body competent by virtue of provisions adopted within the framework of the Treaties;
 - (b) to improve cooperation between the competent authorities of the Member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests;
 - (c) to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.
2. In accordance with the rules laid down by this Decision and at the request of a Member State's competent authority, Eurojust may also assist investigations and prosecutions concerning only that Member State and a non-Member State where an agreement establishing cooperation pursuant to Article 27(3) has been concluded with the said State or where in a specific case there is an essential interest in providing such assistance.
3. In accordance with the rules laid down by this Decision and at the request either of a Member State's competent authority or of the Commission, Eurojust may also assist investigations and prosecutions concerning only that Member State and the Community.

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*Article 4***Competences**

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;
 - (b) the following types of crime:
 - computer crime,
 - fraud and corruption and any criminal offence affecting the European Community's financial interests,
 - the laundering of the proceeds of crime,
 - environmental crime,
 - participation in a criminal organisation within the meaning of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union ⁽¹⁾;
 - (c) other offences committed together with the types of crime and the offences referred to in points (a) and (b).
2. For types of offences other than those referred to in paragraph 1, Eurojust may in addition, in accordance with its objectives, assist in investigations and prosecutions at the request of a competent authority of a Member State.

*Article 5***Tasks of Eurojust**

1. In order to accomplish its objectives, Eurojust shall fulfil its tasks:
 - (a) through one or more of the national members concerned in accordance with Article 6, or
 - (b) as a College in accordance with Article 7:
 - (i) when so requested by one or more of the national members concerned by a case dealt with by Eurojust, or
 - (ii) when the case involves investigations or prosecutions which have repercussions at Union level or which might affect Member States other than those directly concerned, or
 - (iii) when a general question relating to the achievement of its objectives is involved, or
 - (iv) when otherwise provided for in this Decision.
2. When it fulfils its tasks, Eurojust shall indicate whether it is acting through one or more of the national members within the meaning of Article 6 or as a College within the meaning of Article 7.

*Article 6***Tasks of Eurojust acting through its national members**

When Eurojust acts through its national members concerned, it:

- (a) may ask the competent authorities of the Member States concerned to consider:
 - (i) undertaking an investigation or prosecution of specific acts;
 - (ii) accepting that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
 - (iii) coordinating between the competent authorities of the Member States concerned;
 - (iv) setting up a joint investigation team in keeping with the relevant cooperation instruments;

⁽¹⁾ OJ L 351, 29.12.1998, p. 1.

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- (v) providing 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 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 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 accordance with its objectives and within the framework of Article 4(1) in order to improve cooperation and coordination between the competent authorities, forward requests for judicial assistance when they:
 - (i) are made by the competent authority of a Member State;
 - (ii) concern an investigation or prosecution conducted by that authority in a specific case, and
 - (iii) necessitate its intervention with a view to coordinated action.

*Article 7***Tasks of Eurojust acting as a College**

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) above. Such logistical support may include assistance for translation, interpretation and the organisation of coordination meetings.

▼B*Article 8***Reasons**

If the competent authorities of the Member State concerned decide not to comply with a request referred to in Article 7(a), they shall inform Eurojust of their decision and of the reasons for it unless, in the cases referred to in Article 7(a)(i), (ii) and (v), they are unable to give their reasons because:

- (i) to do so would harm essential national security interests, or
- (ii) to do so would jeopardise the success of investigations under way or the safety of individuals.

*Article 9***National members**

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 determined by the Member State of origin. It shall be such as to allow Eurojust to operate properly.

2. All information exchanged between Eurojust and Member States, including requests made within the framework of Article 6(a), shall be directed through the national member.

3. Each Member State shall define the nature and extent of the judicial powers it grants its national member within its own territory. It shall also define the right for a national member to act in relation to foreign judicial authorities, in accordance with its international commitments. 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 so that the latter can inform the other Member States. The latter shall undertake to accept and recognise the prerogatives thus conferred insofar as they are in conformity with international commitments.

4. In order to meet Eurojust's objectives, the national member shall have access to the information contained in the national criminal records or in any other register of his Member State in the same way as stipulated by his national law in the case of a prosecutor, judge or police officer of equivalent competence.

5. A national member may contact the competent authorities of his Member State directly.

6. 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 paragraph 3.

*Article 10***College**

1. The College shall consist of all the national members. Each national member shall have one vote.

2. After consulting the joint supervisory body 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 unanimously 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.

3. When acting in accordance with Article 7(a), the College shall take its decisions by a two-thirds majority. Other decisions of the College shall be taken in accordance with the rules of procedure.

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*Article 11***Role of the Commission**

1. The Commission shall be fully associated with the work of Eurojust, in accordance with Article 36(2) of the Treaty. It shall participate in that work in the areas within its competence.
2. As regards work carried out by Eurojust on the coordination of investigations and prosecutions, the Commission may be invited to provide its expertise.
3. For the purpose of enhancing cooperation between Eurojust and the Commission, Eurojust may agree on necessary practical arrangements with the Commission.

*Article 12***National correspondents**

1. Each Member State may put in place or appoint one or more national correspondents. It shall be a matter of high priority to put in place or appoint such a correspondent for terrorism matters. Relations between the national correspondent and the competent authorities of the Member States shall be governed by national law. A national correspondent shall have his place of work in the Member State which appointed him.
2. Where a Member State appoints a national correspondent, he may be a contact point of the European Judicial Network.
3. Relations between the national member and the national correspondent shall not preclude direct relations between the national member and his competent authorities.

*Article 13***Exchanges of information with the Member States and between national members**

1. The competent authorities of the Member States may exchange with Eurojust any information necessary for the performance of its tasks in accordance with Article 5.
2. In accordance with Article 9, the national members of Eurojust shall be empowered to exchange any information necessary for the performance of its tasks, without prior authorisation, among themselves or with their Member State's competent authorities.

*Article 14***Processing of personal data**

1. Insofar as it is necessary to achieve its objectives, Eurojust may, within the framework of its competence and in order to carry out its tasks, process personal data, by automated means or in structured manual files.
2. Eurojust shall take the necessary measures to guarantee a level of protection for personal data at least equivalent to that resulting from the application of the principles of the Council of Europe Convention of 28 January 1981 and subsequent amendments thereto where they are in force in the Member States.
3. Personal data processed by Eurojust shall be adequate, relevant and not excessive in relation to the purpose of the processing, and, taking into account the information provided by the competent authorities of the Member States or other partners in accordance with Articles 13 and 26, accurate and up-to-date. Personal data processed by Eurojust shall be processed fairly and lawfully.
4. In accordance with this Decision, Eurojust shall establish an index of data relating to investigations and may establish temporary work files which also contain personal data.

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*Article 15***Restrictions on the processing of personal data**

1. When processing data in accordance with Article 14(1), Eurojust may process only the following 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:

- (a) surname, maiden name, given names and any alias or assumed names;
- (b) date and place of birth;
- (c) nationality;
- (d) sex;
- (e) place of residence, profession and whereabouts of the person concerned;
- (f) social security numbers, driving licences, identification documents and passport data;
- (g) information concerning legal persons if it includes information relating to identified or identifiable individuals who are the subject of a judicial investigation or prosecution;
- (h) bank accounts and accounts with other financial institutions;
- (i) description and nature of the alleged offences, the date on which they were committed, the criminal category of the offences and the progress of the investigations;
- (j) the facts pointing to an international extension of the case;
- (k) details relating to alleged membership of a criminal organisation.

2. When processing data in accordance with Article 14(1), Eurojust may process only the following personal data on persons who, under the national legislation of the Member States concerned, are regarded as witnesses or victims in a criminal investigation or prosecution regarding one or more of the types of crime and the offences defined in Article 4:

- (a) surname, maiden name, given names and any alias or assumed names;
- (b) date and place of birth;
- (c) nationality;
- (d) sex;
- (e) place of residence, profession and whereabouts of the person concerned;
- (f) the description and nature of the offences involving them, the date on which they were committed, the criminal category of the offences and the progress of the investigations.

3. However, in exceptional cases, Eurojust may also, for a limited period of time, process other personal data relating to the circumstances of an offence where they are immediately relevant to and included in ongoing investigations which Eurojust is helping to coordinate, provided that the processing of such specific data is in accordance with Articles 14 and 21.

The Data Protection Officer referred to in Article 17 shall be informed immediately of recourse to this paragraph.

Where such other data refer to witnesses or victims within the meaning of paragraph 2, the decision to process them shall be taken jointly by at least two national members.

4. Personal data, processed by automated or other means, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, and data concerning health or sex life may be processed by Eurojust only when such data are necessary

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for the national investigations concerned as well as for coordination within Eurojust.

The Data Protection Officer shall be informed immediately of recourse to this paragraph.

Such data may not be processed in the index referred to in Article 16(1).

Where such other data refer to witnesses or victims within the meaning of paragraph 2, the decision to process them shall be taken by the College.

*Article 16***Index and temporary work files**

1. In order to achieve its objectives, Eurojust shall maintain an automated data file constituting an index of data relating to investigations in which non-personal data and personal data referred to in Article 15(1)(a) to (i) and (k) and paragraph 2 may be stored. That index shall be intended to:

- (a) support the management and coordination of investigations and prosecutions which Eurojust is assisting, in particular by the cross-referencing of information;
- (b) facilitate access to information on ongoing investigations and prosecutions;
- (c) facilitate the monitoring of lawfulness and compliance with the provisions of this Decision concerning the processing of personal data.

2. The index shall contain references to temporary work files processed within the framework of Eurojust.

3. In the performance of their duties under Articles 6 and 7, the national members of Eurojust may process data on the individual cases on which they are working in a temporary work file. They shall allow the Data Protection Officer and, if the College so decides, the other national members and employees authorised to access files to have access to the work file. Each new work file that contains personal data shall be communicated to the Data Protection Officer.

*Article 17***Data Protection Officer**

1. Eurojust shall have a specially appointed Data Protection Officer, who shall be a member of the staff. Within that framework, he shall be under the direct authority of the College. In the performance of the duties referred to in this Article, he shall take instructions from no-one.

2. The Data Protection Officer shall in particular have the following tasks:

- (a) ensuring, in an independent manner, lawfulness and compliance with the provisions of this Decision concerning the processing of personal data;
- (b) ensuring that a written record of the transmission and receipt, for the purposes of Article 19(3) in particular, of personal data is kept in accordance with the provisions to be laid down in the rules of procedure, under the security conditions laid down in Article 22;
- (c) ensuring that data subjects are informed of their rights under this Decision at their request.

3. In the performance of his tasks, the Officer shall have access to all the data processed by Eurojust and to all Eurojust premises.

4. When he finds that in his view processing has not complied with this Decision, the Officer shall:

- (a) inform the College, which shall acknowledge receipt of the information;

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- (b) refer the matter to the joint supervisory body if the College has not resolved the non-compliance of the processing within a reasonable time.

*Article 18***Authorised access to personal data**

Only national members and their assistants referred to in Article 2(2) and authorised Eurojust staff may, for the purpose of achieving Eurojust's objectives, have access to personal data processed by Eurojust.

*Article 19***Right of access to personal data**

1. Every individual shall be entitled to have access to personal data concerning him processed by Eurojust under the conditions laid down in this Article.
2. Any individual wishing to exercise his right to have access to data concerning him which are stored at Eurojust, or to have them checked in accordance with Article 20, may make a request to that effect free of charge in the Member State of his choice, to the authority appointed for that purpose in that Member State, and that authority shall refer it to Eurojust without delay.
3. The right of any individual to have access to personal data concerning him or to have them checked shall be exercised in accordance with the laws and procedures of the Member State in which the individual has made his request. If, however, Eurojust can ascertain which authority in a State transmitted the data in question, that authority may require that the right of access be exercised in accordance with the rules of the law of that Member State.
4. Access to personal data shall be denied if:
 - (a) such access may jeopardise one of Eurojust's activities;
 - (b) such access may jeopardise any national investigation which Eurojust is assisting;
 - (c) such access may jeopardise the rights and freedoms of third parties.
5. The decision to grant this right of access shall take due account of the status, with regard to the data stored by Eurojust, of those individuals submitting the request.
6. The national members concerned by the request shall deal with it and reach a decision on Eurojust's behalf. The request shall be dealt with in full within three months of receipt. Where the members are not in agreement, they shall refer the matter to the College, which shall take its decision on the request by a two-thirds majority.
7. If access is denied or if no personal data concerning the applicant are processed by Eurojust, the latter shall notify the applicant that it has carried out checks, without giving any information which could reveal whether or not the applicant is known.
8. If the applicant is not satisfied with the reply given to his request, he may appeal against that decision before the joint supervisory body. The joint supervisory body shall examine whether or not the decision taken by Eurojust is in conformity with this Decision.
9. The competent law enforcement authorities of the Member States shall be consulted by Eurojust before a decision is taken. They shall subsequently be notified of its contents through the national members concerned.

*Article 20***Correction and deletion of personal data**

1. In accordance with Article 19(3), every individual shall be entitled to ask Eurojust to correct, block or delete data concerning

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him if they are incorrect or incomplete or if their input or storage contravenes this Decision.

2. Eurojust shall notify the applicant if it corrects, blocks or deletes the data concerning him. If the applicant is not satisfied with Eurojust's reply, he may refer the matter to the Joint Supervisory Body within thirty days of receiving Eurojust's decision.

3. At the request of a Member State's competent authorities, national member or national correspondent, if any, and under their responsibility, Eurojust shall, in accordance with its rules of procedure, correct or delete personal data being processed by Eurojust which were transmitted or entered by that Member State, its national member or its national correspondent. The Member States' competent authorities and Eurojust, including the national member or national correspondent, if any, shall in this context ensure that the principles laid down in Article 14(2) and (3) and in Article 15(4) are complied with.

4. If it emerges that personal data processed by Eurojust are incorrect or incomplete or that their input or storage contravenes the provisions of this Decision, Eurojust shall block, correct or delete such data.

5. In the cases referred to in paragraphs 3 and 4, all the suppliers and addressees of such data shall be notified immediately. In accordance with the rules applicable to them, the addressees, shall then correct, block or delete those data in their own systems.

Article 21

Time limits for the storage of personal data

1. Personal data processed by Eurojust shall be stored by Eurojust for only as long as is necessary for the achievement of its objectives.

2. The personal data referred to in Article 14(1) which have been processed by Eurojust may not be stored beyond:

- (a) the date on which prosecution is barred under the statute of limitations of all the Member States concerned by the investigation and prosecutions;
- (b) the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecutions which justified coordination by Eurojust became final;
- (c) the date on which Eurojust and the Member States concerned mutually established or agreed that it was no longer necessary for Eurojust to coordinate the investigation and prosecutions.

3. (a) Observance of the storage periods referred to in paragraph 2 shall be reviewed constantly by appropriate automated processing. Nevertheless, a review of the need to store the data shall be carried out every three years after they were entered.

(b) When one of the storage deadlines referred to in paragraph 2 has expired, Eurojust shall review the need to store the data longer in order to enable it to achieve its objectives and it may decide by way of derogation to store those data until the following review.

(c) Where data has been stored by way of derogation pursuant to point (b) a review of the need to store those data shall take place every three years.

4. Where a file exists containing non-automated and unstructured data, once the deadline for storage of the last item of automated data from the file has elapsed all the documents in the file shall be returned to the authority which supplied them and any copies shall be destroyed.

5. Where Eurojust has coordinated an investigation or prosecutions, the national members concerned shall inform Eurojust and the other Member States concerned of all the judicial decisions relating to the case which have become final in order, *inter alia*, that paragraph 2(b) may be applied.

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*Article 22***Data security**

1. Eurojust and, insofar as it is concerned by data transmitted from Eurojust, each Member State, shall, as regards the processing of personal data within the framework of this Decision, protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or any other unauthorised form of processing.
2. The rules of procedure shall contain the technical measures and the organisational arrangements needed to implement this Decision with regard to data security and in particular measures designed to:
 - (a) deny unauthorised persons access to data processing equipment used for processing personal data;
 - (b) prevent the unauthorised reading, copying, modification or removal of data media;
 - (c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data;
 - (d) prevent the use of automated data processing systems by unauthorised persons using data communication equipment;
 - (e) ensure that persons authorised to use an automated data processing system only have access to the data covered by their access authorisation;
 - (f) ensure that it is possible to verify and establish to which bodies personal data are transmitted when data are communicated;
 - (g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data processing systems and when and by whom the data were input;
 - (h) prevent unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media.

*Article 23***Joint Supervisory Body**

1. An independent joint supervisory body shall be established to monitor collectively the Eurojust activities referred to in Articles 14 to 22 in order to ensure that the processing of personal data is carried out in accordance with this Decision. In order to fulfil these tasks, the Joint Supervisory Body shall be entitled to have full access to all files where such personal data are processed. Eurojust shall provide the Joint Supervisory Body with all information from such files that it requests and shall assist that body in its tasks by every other means.

The Joint Supervisory Body shall meet at least once in each half year. It shall also meet within the three months following the lodging of an appeal and may be convened by its chairman when at least two Member States so request.

In order to set up the Joint Supervisory Body, each Member State, acting in accordance with its legal system, shall appoint a judge who is not a member of Eurojust, or, if its constitutional or national system so requires a person holding an office giving him sufficient independence, for inclusion on the list of judges who may sit on the Joint Supervisory Body as members or ad hoc judges. No such appointment shall be for less than eighteen months. Revocation of the appointment shall be governed by the principles for removal applicable under the national law of the Member State of origin. Appointment and removal shall be communicated to both the Council General Secretariat and Eurojust.

2. The Joint Supervisory Body shall be composed of three permanent members and, as provided for in paragraph 4, ad hoc judges.

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3. A judge appointed by a Member State shall become a permanent member one year before his Member State assumes the Presidency of the Council and shall remain a permanent member for eighteen months.

The judge appointed by the Member State holding the Presidency of the Council shall chair the Joint Supervisory Body.

4. One or more ad hoc judges shall also have seats, but only for the duration of the examination of an appeal concerning personal data from the Member State which has appointed them.

5. The composition of the Joint Supervisory Body shall remain the same for the duration of an appeals procedure even if the permanent members have reached the end of their term of office pursuant to paragraph 3.

6. Each member and ad hoc judge shall be entitled to one vote. In the event of a tied vote, the chairman shall have the casting vote.

7. The Joint Supervisory Body shall examine appeals submitted to it in accordance with Article 19(8) and Article 20(2) and carry out controls in accordance with paragraph 1, first subparagraph, of this Article. If the Joint Supervisory Body considers that a decision taken by Eurojust or the processing of data by it is not compatible with this Decision, the matter shall be referred to Eurojust, which shall accept the decision of the Joint Supervisory Body.

8. Decisions of the Joint Supervisory Body shall be final and binding on Eurojust.

9. The persons appointed by the Member States in accordance with paragraph 1, third subparagraph, presided over by the chairman of the Joint Supervisory Body, shall adopt internal rules of procedure which, for the purpose of the examination of appeals, lay down objective criteria for the appointment of the Body's members.

10. Secretariat costs shall be borne by the Eurojust budget. The secretariat of the Joint Supervisory Body shall enjoy independence in the discharge of its function within the Eurojust secretariat.

11. The members of the Joint Supervisory Body shall be subject to the obligation of confidentiality laid down in Article 25.

12. The Joint Supervisory Body shall submit an annual report to the Council.

Article 24

Liability for unauthorised or incorrect processing of data

1. Eurojust shall be liable, in accordance with the national law of the Member State where its headquarters are situated, for any damage caused to an individual which results from unauthorised or incorrect processing of data carried out by it.

2. Complaints against Eurojust pursuant to the liability referred to in paragraph 1 shall be heard by the courts of the Member State where its headquarters are situated.

3. Each Member State shall be liable, in accordance with its national law, for any damage caused to an individual which results from unauthorised or incorrect processing carried out by it of data which were communicated to Eurojust.

Article 25

Confidentiality

1. The national members and their assistants referred to in Article 2(2), Eurojust staff and national correspondents, if any, and the Data Protection Officer shall be bound by an obligation of confidentiality, without prejudice to Article 9(1).

2. The obligation of confidentiality shall apply to all persons and to all bodies called upon to work with Eurojust.

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3. The obligation of confidentiality shall also apply after leaving office or employment or after the termination of the activities of the persons referred to in paragraphs 1 and 2.

4. Without prejudice to Article 9(1), the obligation of confidentiality shall apply to all information received by Eurojust.

*Article 26***Relations with partners**

1. Eurojust shall establish and maintain close cooperation with Europol, in so far 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.

2. Eurojust shall maintain privileged relations with the European Judicial Network based on consultation and complementarity, especially between the national member, the contact points of the same Member State and the national correspondent, if any. 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 Joint Action 98/428/JHA and to the telecommunication network set up under Article 10 of the said Joint Action;

(b) by way of derogation from Article 9(3) of Joint Action 98/428/JHA, the secretariat of the European Judicial Network shall form part of the Eurojust secretariat. It shall function as a separate and autonomous unit. It shall be able to 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;

(c) 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.

3. Eurojust shall establish and maintain close cooperation with OLAF. To that end, OLAF may contribute to Eurojust's work to coordinate investigations and prosecution procedures regarding the protection of the financial interests of the Communities, either on the initiative of Eurojust or at the request of OLAF where the competent national authorities concerned do not oppose such participation.

4. For purposes of the receipt and transmission of information between Eurojust and OLAF, and without prejudice to Article 9, Member States shall ensure that the national members of Eurojust shall be regarded as competent authorities of the Member States solely for the purposes of Regulation (EC) No 1073/1999 and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)⁽¹⁾. The exchange of information between OLAF and national members shall be without prejudice to the information which must be given to other competent authorities under these regulations.

5. Eurojust may, in order to accomplish its objectives, establish contacts and exchange experiences of a non-operational nature with other bodies, in particular international organisations.

6. Eurojust may, on a case-by-case basis, cooperate with liaison magistrates of the Member States, within the meaning of Council Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the

⁽¹⁾ OJ L 136, 31.5.1999, p. 8.

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exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union ⁽¹⁾.

*Article 27***Exchanges of information with partners**

1. In accordance with this Decision, Eurojust may exchange any information necessary for the performance of its tasks with:

- (a) bodies competent by virtue of provisions adopted within the framework of the Treaties;
- (b) international organisations and bodies;
- (c) authorities of third States which are competent for investigations and prosecutions.

2. Before Eurojust exchanges any information with the entities referred to in paragraph 1(b) and (c), the national member of the Member State which submitted the information shall give his consent to the transfer of that information. In appropriate cases the national member shall consult the competent authorities of the Member States.

3. Eurojust may conclude cooperation agreements, approved by the Council, with third States and the entities referred to in paragraph 1. Such agreements may, in particular, contain provisions concerning arrangements for the secondment of liaison officers or liaison magistrates to Eurojust. They may also contain provisions concerning the exchange of personal data. In that event the Joint Supervisory Body shall be consulted by Eurojust.

To resolve urgent matters, Eurojust may also cooperate with the entities referred to in paragraph 1(b) and (c) without concluding an agreement with them provided that such cooperation does not involve the transmission of personal data to them by Eurojust.

4. Without prejudice to paragraph 3, the transmission of personal data by Eurojust to the entities referred to in paragraph 1(b) and to the authorities referred to in paragraph 1(c) of third States which are not subject to the Council of Europe Convention of 28 January 1981 may be effected only when an adequate level of data protection is ensured.

5. Any subsequent failure, or substantial likelihood of failure, on the part of the third States or entities referred to in paragraph 1(b) and (c) to meet the conditions referred to in paragraph 4 shall immediately be communicated by Eurojust to the Joint Supervisory Body and the Member States concerned. The Joint Supervisory Body may prevent the further exchange of personal data with the relevant entities until it is satisfied that adequate remedies have been provided.

6. However, even if the conditions referred to in paragraphs 3 and 4 are not fulfilled, a national member may, acting in his national capacity, by way of exception and with the sole aim of taking urgent measures to counter imminent serious danger threatening a person or public security, carry out an exchange of information involving personal data. The national member shall be responsible for the legality of authorising the communication. The national member shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorised only if the recipient gives an undertaking that the data will be used only for the purpose for which it was communicated.

*Article 28***Organisation and operation**

1. The College shall be responsible for the organisation and operation of Eurojust.

⁽¹⁾ OJ L 105, 27.4.1996, p. 1.

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2. The College shall elect a President from among the national members and may, if it considers it necessary, elect at most two Vice-Presidents. The result of the election shall be submitted to the Council for its approval.
3. The President shall exercise his duties on behalf of the College and under its authority, direct its work and monitor the daily management ensured by the Administrative Director. The rules of procedure shall specify the cases in which his decisions or actions shall require prior authorisation or a report to the College.
4. The term of office of the President shall be three years. He may be re-elected once. The term of office of any Vice-President(s) shall be governed by the rules of procedure.
5. Eurojust shall be assisted by a secretariat headed by an Administrative Director.
6. Eurojust shall exercise over its staff the powers devolved to the Appointing Authority. The College shall adopt appropriate rules for the implementation of this paragraph in accordance with the rules of procedure.

*Article 29***Administrative Director**

1. The Administrative Director of Eurojust shall be appointed unanimously by the College. The College shall set up a selection board which, following a call for applications, shall establish a list of candidates from among whom the College shall choose the Administrative Director.
2. The term of office of the Administrative Director shall be five years. It shall be renewable.
3. The Administrative Director shall be subject to the rules and regulations applicable to officials and other servants of the European Communities.
4. The Administrative Director shall work under the authority of the College and its President, acting in accordance with Article 28(3). He may be removed from office by the College by a two-thirds majority.
5. The Administrative Director shall be responsible, under the supervision of the President, for the day-to-day administration of Eurojust and for staff management.

*Article 30***Staff**

1. Eurojust staff shall be subject to the rules and regulations applicable to the officials and other servants of the European Communities, particularly as regards their recruitment and status.
2. Eurojust staff shall consist of staff recruited according to the rules and regulations referred to in paragraph 1, taking into account all the criteria referred to in Article 27 of the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾, including their geographical distribution. They shall have the status of permanent staff, temporary staff or local staff. At the request of the Administrative Director, and in agreement with the President on behalf of the College, Community officials may be seconded to Eurojust by the Community institutions as temporary staff. Member States may second national experts to Eurojust. For this last case, the College shall adopt the necessary implementing arrangements.

⁽¹⁾ OJ L 56, 4.3.1968. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 2581/2001 (OJ L 345, 29.12.2001, p. 1).

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3. Under the authority of the College, the staff shall carry out its tasks bearing in mind the objectives and mandate of Eurojust, without seeking or accepting instructions from any government, authority, organisation or person extraneous to Eurojust.

*Article 31***Assistance with interpreting and translation**

1. The official linguistic arrangements of the Union shall apply to Eurojust proceedings.
2. The annual report to the Council, referred to in the second subparagraph of Article 32(1), shall be drawn up in the official languages of the Union institutions.

*Article 32***Information to the European Parliament and the Council**

1. The President, on behalf of the College, shall report to the Council in writing every year on the activities and management, including budgetary management, of Eurojust.

To that end, the College shall prepare an annual report on the activities of Eurojust and on any criminal policy problems within the Union highlighted as a result of Eurojust's activities. In that report, Eurojust may also make proposals for the improvement of judicial cooperation in criminal matters.

The President shall also submit any report or any other information on the operation of Eurojust which may be required of him by the Council.

2. Each year the Presidency of the Council shall forward a report to the European Parliament on the work carried out by Eurojust and on the activities of the Joint Supervisory Body.

*Article 33***Finance**

1. The salaries and emoluments of the national members and assistants referred to in Article 2(2) shall be borne by their Member State of origin.
2. Where national members act within the framework of Eurojust's tasks, the relevant expenditure shall be regarded as operational expenditure within the meaning of Article 41(3) of the Treaty.

*Article 34***Budget**

1. Forecasts shall be made of all Eurojust revenue and expenditure for each financial year, which shall be the same as the calendar year. Revenue and expenditure shall be entered in the budget, which shall include the establishment plan which shall be submitted to the budget authority competent for the general budget of the European Union. The establishment plan shall consist of posts of a permanent or temporary nature and a reference to national experts seconded, and shall state the number, grade and category of the staff employed by Eurojust for the financial year in question.
2. Revenue and expenditure shall be balanced in the Eurojust budget.
3. Without prejudice to other resources, Eurojust revenue may include a subsidy entered in the general budget of the European Union.
4. Eurojust expenditure shall include *inter alia* expenditure relating to interpreters and translators, expenditure on security, administrative and infrastructure expenditure, operational and rental costs, travel

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expenses of members of Eurojust and its staff and costs arising from contracts with third parties.

▼M1*Article 35***Drawing up of the budget**

1. Each year the College, on the basis of a draft drawn up by the Administrative Director, shall produce an estimate of revenue and expenditure for Eurojust for the following financial year. This estimate, which shall include a draft establishment plan, shall be forwarded by the College to the Commission by 31 March at the latest.
2. On the basis of the estimate, the Commission shall propose in the preliminary draft general budget of the European Union the amount of the annual subsidy as well as the posts of a permanent or temporary nature and submit this proposal to the budgetary authority in accordance with Article 272 of the Treaty.
3. The budgetary authority shall authorise the appropriations for the subsidy to Eurojust and determine the posts of a permanent or temporary nature within the framework of the Staff Regulations of officials and other Servants of the European Communities.
4. Before the beginning of the financial year, the College of Eurojust shall adopt the budget, including the establishment plan referred to in Article 34(1), third sentence, on the basis of the annual subsidy and posts authorised by the budgetary authority in accordance with paragraph 3 of this Article, adjusting it to the various contributions granted to Eurojust and the funds from other sources.

*Article 36***Implementation of the budget and discharge**

1. The Administrative Director shall, as authorising officer, implement the Eurojust budget. He shall report to the College on the implementation of the budget.
2. By 1 March at the latest following each financial year, the accounting officer of Eurojust shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the general Financial Regulation.
3. By 31 March at the latest following each financial year, the Commission's accounting officer shall forward Eurojust's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be forwarded to the European Parliament and the Council.
4. On receipt of the Court of Auditors' observations on Eurojust's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Administrative Director shall draw up Eurojust's final accounts under his own responsibility and submit them to the College of Eurojust for an opinion.
5. The College of Eurojust shall deliver an opinion on Eurojust's final accounts.
6. The Administrative Director shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the College of Eurojust's opinion.
7. The final accounts shall be published.
8. The Administrative Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the College of Eurojust.

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9. The Administrative Director, acting under the authority of the College of Eurojust and its President, shall submit to the European Parliament at the latter's request any information required for the smooth application of the discharge procedure for the financial year in question, as laid down in Article 146(3) of the general Financial Regulation.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Administrative Director in respect of the implementation of the budget for year N.

*Article 37***Financial regulation applicable to the budget**

1. The financial rules applicable to Eurojust's budget shall be adopted unanimously by the College after the Commission has been consulted. They may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ unless specifically required for Eurojust's operation and with the Commission's prior consent.

▼B*Article 38***Audit****▼M1**

1. The responsibility for putting in place internal control systems and procedures suitable for carrying out his tasks shall lie with the authorising officer.

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2. The College shall appoint an internal auditor who shall be responsible in particular for providing, in accordance with the relevant international standards, an assurance regarding the proper functioning of the systems and procedures for implementing the budget. The internal auditor may not be either the authorising officer or the accountant. The College may ask the Commission's internal auditor to carry out these duties.

3. The auditor shall report his findings and recommendations to Eurojust and submit a copy of the report to the Commission. Eurojust shall, in the light of the auditor's reports, take the necessary measures in response to these recommendations.

4. The rules laid down by Regulation (EC) No 1073/1999 shall apply to Eurojust. The College shall adopt the necessary implementing measures.

*Article 39***Access to documents**

On the basis of a proposal by the Administrative Director, the College shall adopt rules for access to Eurojust documents, taking account of the principles and limits stated in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽²⁾.

⁽¹⁾ OJ L 357, 31.12.2002, p. 72 with Corrigendum in OJ L 2, 7.1.2003, p. 39.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.



Article 40

Territorial application

This Decision shall apply to Gibraltar, which shall be represented by the national member for the United Kingdom.

Article 41

Transitional provisions

1. The national members of the Provisional Judicial Cooperation Unit appointed by the Member States under the Council Decision 2000/799/JHA of 14 December 2000 setting up a Provisional Judicial Cooperation Unit ⁽¹⁾ shall take on the role of national member of Eurojust under Article 2 of this Decision until the national member of the Member State concerned is definitively appointed but not after the end of the second month after the entry into force of this Decision, on which date their functions shall cease.

As such, the national members of the Provisional Unit shall enjoy all the powers of national members under this Decision.

The definitive appointment of a national member shall take effect on the day designated by the Member State for that purpose when notifying the General Secretariat of the Council by official post.

2. During the three months following the entry into force of this Decision, a Member State may declare that until the date laid down in Article 42 it will not apply to certain Articles, in particular Articles 9 and 13, on the grounds that such application is not compatible with its national law. The General Secretariat of the Council shall inform the Member States and the Commission of any such declaration.

3. As long as the Council has not approved Eurojust's rules of procedure the College shall take all its decisions by a two-thirds majority save where this Decision provides for a unanimous decision.

4. The Member States shall ensure that until the definitive establishment of Eurojust all measures necessary are taken to guarantee that all cases dealt with by the Provisional Judicial Cooperation Unit, in particular in connection with the coordination of investigations and prosecutions, can continue to be dealt with effectively by national members. National members shall pursue at least the same objectives and perform the same functions as the Provisional Judicial Cooperation Unit.

Article 42

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 6 September 2003.

Article 43

Entry into force

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities* without prejudice to Article 41. On that date the Provisional Judicial Cooperation Unit shall cease to exist.

⁽¹⁾ OJ L 324, 21.12.2000, p. 2.