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**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	2 December 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 757 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2018/1727 of the European Parliament and the Council and Council Decision 2005/671/JHA, as regards the digital information exchange in terrorism cases

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Delegations will find attached document COM(2021) 757 final.

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Encl.: COM(2021) 757 final



Brussels, 1.12.2021  
COM(2021) 757 final

2021/0393 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) 2018/1727 of the European Parliament and the Council and  
Council Decision 2005/671/JHA, as regards the digital information exchange in  
terrorism cases**

{SWD(2021) 391 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

The European Union Agency for Criminal Justice Cooperation (Eurojust) coordinates investigations and prosecutions of serious cross-border crime in Europe and beyond. As the European Union's (EU) hub for judicial cooperation in criminal matters, Eurojust supports national investigating and prosecuting authorities.

Combating terrorism has been part of Eurojust's mandate since its creation in 2002 and remains one of its core priorities. To combat terrorism effectively, it is crucial that competent authorities efficiently share relevant information among themselves and with EU agencies and bodies to prevent, detect, investigate or prosecute terrorist offences.

Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences<sup>1</sup> states that to combat terrorism, it is essential to have the most complete and up to date information possible. The persistence and complexity of the terrorist threat gives rise to the need for more information sharing.

Against this background, Council Decision 2005/671/JHA provides that Member States must collect all relevant information concerning and resulting from criminal investigations linked to terrorist offences, which affect or may affect two or more Member States and send it to Europol<sup>2</sup>. In addition, Member States must collect all relevant information concerning prosecutions and convictions for terrorist offences, which affect or may affect two or more Member States and send it to Eurojust. Each Member State must also make available all relevant information gathered by its competent authorities about criminal proceedings connected with terrorist offences. This information must be swiftly made available to the competent authorities of another Member State where the information could be used to prevent, detect, investigate or prosecute terrorist offences.

Since 2005, the importance of sharing information between Member States and with Europol and Eurojust has only become more evident. Directive (EU) 2017/541 on combating terrorism<sup>3</sup> amended Council Decision 2005/671/JHA, to ensure that information is shared between Member States in an effective and timely manner, taking into account the serious threat posed by terrorist offences.

One of the key aspects of Eurojust's work in this field is the European Judicial Counter-Terrorism Register (CTR). The CTR was launched in September 2019, based on Council Decision 2005/671/JHA. For the CTR, Member States provide information on judicial proceedings concerning terrorist offences in their jurisdiction. These data are stored and cross-checked in Eurojust's information processing system - the Eurojust case management system

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<sup>1</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.9.2005, p. 22).

<sup>2</sup> Europol is the EU's law enforcement agency. Europol supports law enforcement authorities throughout the EU on crime fighting activities in all its mandated areas.

<sup>3</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

(CMS) - in the same way as operational data related to ongoing cases of judicial cooperation supported by Eurojust. The objective is to identify potential links between judicial counter-terrorism proceedings and possible coordination needs stemming from these. Based on the findings of the Digital Criminal Justice study<sup>4</sup>, improving the functioning of the CTR was identified as one of the key priorities of European criminal law.

With the entry into force of Regulation (EU) 2018/1727 on the European Union Agency for Criminal Justice Cooperation<sup>5</sup> ('Eurojust Regulation') in December 2019, Eurojust was provided with a new legal framework and transformed into an EU agency. As the Eurojust Regulation was adopted before the establishment of the CTR, the CTR and its functions were not provided for in the Eurojust Regulation. This creates legal uncertainties, especially as the relationship between Council Decision 2005/671/JHA and the Eurojust Regulation is unclear.

Further problems exist regarding the data national authorities share with Eurojust. Currently, Eurojust often does not receive the necessary data from national authorities to cross-check information on terrorism cases in line with Council Decision 2005/671/JHA and on serious crimes in line with Article 21 of the Eurojust Regulation. The reasons for this are numerous. To begin with, Council Decision 2005/671/JHA is not sufficiently precise as it was intended to have a much broader scope. While it provides some guidance on what kind of information Member States must send to Eurojust, it is still not specific enough. In addition, information is often not shared due to the lack of secure communication channels and the administrative burden caused by the manual extraction of the information, as more structured and automated exchanges of data are not possible without further digitalisation.

Moreover, the current CMS and the data processing environment are limiting Eurojust's more proactive role in digitalised judicial cooperation. The technically outdated Eurojust CMS is unable to properly integrate and support an innovative tool requiring secure digital exchange and cross-checking of data such as the CTR. In addition, the technical design of the CMS is reflected in the Eurojust Regulation. The Eurojust Regulation restricts the set up of the CMS to temporary work files, aiming to support the administrative follow-up on ongoing cases, and an index<sup>6</sup>. It does not explicitly provide for an additional CTR database within the CMS to be set up. Processing of personal data outside the CMS is prohibited<sup>7</sup>. Therefore, the establishment of an additional CTR database outside the CMS is also not legally possible.

Practical and legal challenges also exist regarding the cooperation with third country Liaison Prosecutors (LPs). Eurojust has concluded cooperation agreements with 12 third countries<sup>8</sup> before the entry into force of the Eurojust Regulation. These agreements contain provisions

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<sup>4</sup> Cross-border Digital Criminal Justice, Final Report, <https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en>.

<sup>5</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

<sup>6</sup> See Article 23(1) of the Eurojust Regulation.

<sup>7</sup> See Article 23(6) of the Eurojust Regulation.

<sup>8</sup> Cooperation agreements exist between Eurojust and Albania, Montenegro, North Macedonia, Serbia, Georgia, Iceland, Liechtenstein, Moldova, Norway, Switzerland, Ukraine and the USA. Eurojust has concluded another cooperation agreement with Denmark, which is not a member of Eurojust in line with Protocol 22 of the Lisbon Treaty. Part three, Title IV of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, also contains provisions on the future cooperation between national authorities of the UK and Eurojust.

on data exchange, data protection safeguards and practical cooperation. To facilitate the cooperation, they allow LPs to be posted to Eurojust. These LPs work side by side with their colleagues from EU Member States and provide support in cross-border investigations involving their country in line with the applicable cooperation agreements. The Eurojust Regulation, however, does not mention these LPs or their access to the CMS at all. Therefore, it is currently unclear how data, including personal data, can be exchanged efficiently and securely with third country LPs in compliance with the Eurojust Regulation.

To that end, this proposal seeks to enable Eurojust to fulfil its stronger, more proactive role envisaged in the Eurojust Regulation in supporting and strengthening the coordination and the cooperation between the national investigating and prosecuting authorities in serious crime, in particular terrorist offences, by:

- enabling Eurojust to identify links between parallel cross-border investigations and prosecutions regarding terrorist offences more efficiently and to provide proactively feedback on these links to Member States;
- rendering the data exchange between Member States, Eurojust and third countries more efficient and secure.

To achieve these objectives, the proposal also aims to provide legal certainty on the precise scope of the obligation to share information in terrorism cases and the relationship with Council Decision 2005/671/JHA, requiring substantive amendments to the Eurojust Regulation as well as Council Decision 2005/671/JHA.

- **Consistency with existing policy provisions in the policy area**

The proposal was announced in the Commission's Communication on the digitalisation of justice in the EU<sup>9</sup> as part of a broader initiative to enable the secure electronic communication and exchange of information and documents between courts, national authorities, and justice and home affairs agencies. In line with the Communication, it builds on e-CODEX<sup>10</sup> as the gold standard for secure digital communication in cross-border judicial proceedings. As part of the digitalisation of justice package and together with the initiative on the digitalisation of cross-border judicial cooperation and the initiative on Joint Investigation Teams collaboration platform, it is one of the proposals listed in the 2021 Commission work plan under the heading 'A New Push for European Democracy'<sup>11</sup>.

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<sup>9</sup> Commission Communication on the Digitalisation of justice in the European Union - A toolbox of opportunities, COM(2020) 710 final, 2.12.2020.

<sup>10</sup> e-CODEX is a software package that enables connection between national systems, allowing users, such as judicial authorities, legal practitioners and members of the public, to send and receive documents, legal forms, evidence and other information in a swift and safe manner. e-CODEX is already used by the e-evidence digital exchange system (eEDES) and certain pilot projects. To ensure its long-term sustainability, the Commission has adopted a proposal to entrust its further development and maintenance to the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice.

<sup>11</sup> Commission Communication Commission Work Programme 2021, A Union of vitality in a world of fragility, COM(2020) 690 final.

The proposal also takes into account the Commission proposal for a Directive (EU) [...] of the European Parliament and the Council<sup>12</sup> amending Council Decision 2005/671/JHA in order to align it with Directive (EU) 2016/680<sup>13</sup> (the Data Protection Law Enforcement Directive – LED). Close coordination will be necessary throughout the legislative process to ensure consistency of the amendments.

- **Consistency with other Union policies**

The importance of improving the digital exchange of data on terrorism cases and of modernising Eurojust’s CMS has been stressed in several high-level documents, such as the EU Security Union strategy<sup>14</sup>, the Counter-Terrorism agenda for the EU<sup>15</sup> and the EU strategy to tackle Organised Crime<sup>16</sup>. In the latter, the Commission announced it would support modernising Eurojust’s CMS to help Eurojust provide feedback to national authorities and detect judicial links between ongoing investigations.

The proposal also fully takes account of the mandate, with which the Council authorised the Commission to negotiate further cooperation agreements on the cooperation between Eurojust and 13 further third countries<sup>17</sup>.

It also takes account of Eurojust’s cooperation with other EU bodies or agencies, namely the European Public Prosecutor’s Office<sup>18</sup>, Europol as the EU agency for police cooperation<sup>19</sup>, the European Anti-Fraud Office (OLAF)<sup>20</sup>, and the European Border and Coast Guard Agency (Frontex)<sup>21</sup>, and the importance of secure data exchange and the establishment of hit/no-hit connections between some of them.

Given the highly sensitive nature of the information exchanged, it is essential that the implementation of the toolbox approach on the digitalisation of justice, including through this proposal, takes place in a way that guarantees strong cybersecurity standards. This is

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<sup>12</sup> Directive (EU) [...] of the European Parliament and of the Council amending Council Decision 2005/671/JHA, as regards its alignment with EU rules on the protection of personal data (OJ L ...).

<sup>13</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>14</sup> Commission Communication on the EU Security Union strategy, COM(2020) 605 final.

<sup>15</sup> Commission Communication on a Counter-Terrorism agenda for the EU, COM(2020) 795 final.

<sup>16</sup> Commission Communication on the EU strategy to tackle Organised Crime 2021-2025, COM(2021) 170 final.

<sup>17</sup> Council Decision (EU) 2021/7072 of 16 March 2021.

<sup>18</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’) (OJ L 283, 31.10.2017, p. 1).

<sup>19</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

<sup>20</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>21</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

consistent with the approach outlined in the EU's Cybersecurity Strategy<sup>22</sup> and the Commission's proposal for a Directive on measures for a high common level of cybersecurity across the Union (NIS2)<sup>23</sup>, aiming to improve further the cybersecurity capacities of public and private entities, competent authorities and the Union as a whole in the field of cybersecurity and critical infrastructure protection. While judiciary in Member States is not in the scope of NIS2 proposal it is of essence that Member States will put in place national measures that would ensure a comparable level of cybersecurity.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The legal basis for amending the Eurojust Regulation is Article 85 of the Treaty on the Functioning of the European Union (TFEU). Under Article 85 TFEU, Eurojust's structure, operation, field of action and tasks are to be determined by a regulation. This also includes the establishment of secure communication channel(s) between EU Member States and Eurojust as well as the cooperation of Eurojust with third country LPs seconded at Eurojust.

As regards the amendments of Council Decision 2005/671/JHA concerning the carve-out of references to Eurojust, those amendments are of a purely consequential nature to the amendments regarding the Eurojust Regulation. Hence, they can be also based on Article 85 TFEU.

- **Subsidiarity (for non-exclusive competence)**

According to the principle of subsidiarity laid down in Article 5(3) of the Treaty on European Union (TEU), action at EU level should only be taken when the aims cannot be sufficiently achieved by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved at EU level. There is also a need to match the nature and intensity of a given measure to the identified problem.

As terrorism offences are often of a cross-border nature, action at national level alone cannot counter them effectively. That is why Member States choose to work together to tackle the threats posed by terrorism. They seek to coordinate their judicial response and cooperate to address shared challenges. As the EU agency for criminal justice cooperation, Eurojust is a strong expression of this endeavour by the Member States to keep their citizens safe by working together.

There is a specific need for EU action because the measures envisaged have an intrinsic EU dimension. They aim at improving the ability of Eurojust to act. It is Eurojust's mission to support and strengthen coordination and cooperation between national judicial authorities in relation to serious crime including terrorism affecting two or more Member States or requiring a prosecution on common bases. This objective can only be achieved at the EU level, in line with the subsidiarity principle. Member States cannot create a more appropriate legal framework for the functioning of the CTR and amending Decision 2005/671/JHA alone.

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<sup>22</sup> JOIN/2020/18 final.

<sup>23</sup> COM 2020/823 final.

It is therefore up to the EU to establish the legally binding instruments to achieve these results in line with the powers conferred upon it by the EU treaties.

- **Proportionality**

According to the principle of proportionality laid down in Article 5(4) TEU, there is a need to match the nature and intensity of a given measure to the identified problem. All problems addressed in this proposal call for EU-level support for Member States to tackle these problems effectively.

Article 1 and Article 2 of the proposal aim at better integrating the CTR in Eurojust's legal and technical framework and improving the cooperation with third country LPs. Without these amendments, Eurojust is unable to identify links between simultaneous investigations and prosecutions. It cannot fulfil its crucial role in supporting and strengthening cooperation between Member States' national authorities in the investigation and prosecution of serious forms of crime, especially terrorism. To enable Eurojust to fully perform its crucial task, it is necessary to ensure the coordinated judicial follow-up.

Due to the increasing cross-border nature of organised crime and terrorist organisations, facilitated by the use of digital communication tools, a more coordinated approach is also needed regarding third countries. Investigations and prosecutions often involve authorities from outside the EU. Therefore, in line with the principle of proportionality, the proposal does not go beyond what is necessary to achieve this objective.

- **Choice of the instrument**

Article 1 of the proposal amends the Eurojust Regulation. Article 85 TFEU provides the legal basis for the Eurojust Regulation. It provides for Eurojust to be governed by a regulation to be adopted in line with the ordinary legislative procedure.

Article 2 of the proposal aims at amending a Council Decision, which was adopted before the entry into force of the Treaty of Lisbon in 2009. As these amendments are of purely consequential nature to the amendments of the Eurojust Regulation, they can be included as an ancillary matter in the regulation amending the Eurojust Regulation.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Stakeholder consultations**

An extensive targeted consultation was carried out to ensure the broad participation of relevant stakeholders in the preparation of the proposal. Consultations included bilateral contacts, stakeholder and expert meetings, written contribution and a survey of practitioners.

The Commission gathered a broad and balanced range of views on this issue by giving the opportunity to all relevant parties to express their opinions. In particular, Member States, national authorities such as the national correspondents for terrorism matters, prosecutors and judges, Eurojust, its national desks and administration, the European Counter-Terrorism Coordinator, Europol, academics, fundamental rights and data protection stakeholders were included in the consultation process.

In addition, the issue was discussed, on 17 June 2021, in the Commission's Expert Group on EU Criminal policy, consisting of academics and practitioners in EU criminal law, and, on 24 June 2021, the Commission's Digital Criminal Justice Expert Group, consisting of Member States experts.

All stakeholders broadly welcomed the initiative and agreed with the problem areas identified. The stakeholders were quite clear about the information to be shared with Eurojust: it should be the data necessary to identify subjects of investigations. Overall, the respondents were satisfied with the extent of data collected through the current Eurojust CTR template.

There was a strong support to introduce secure communication channels between the Member States and Eurojust. Eurojust would prefer secure communication channels for all operational personal data sent to Eurojust. Many stakeholders underlined that the current CMS would not be able to fulfil the tasks envisaged for the CTR.

There was a general agreement that LPs should have operational access to the CMS. Member States and Eurojust practitioners pointed out that third countries, which have concluded a cooperation agreement and are therefore able to post a LP to Eurojust, should be able to open and close cases independently.

- **Collection and use of expertise**

The proposal is based on the findings of the Digital Criminal Justice study<sup>24</sup>. The study reviewed the needs and options to create a 'Cross-Border Digital Criminal Justice', a fast, reliable and secure IT infrastructure to enable national prosecution authorities in Member States to interact with their national counterparts, Justice and Home Affairs (JHA) agencies and EU bodies in the JHA area.

- **Impact assessment**

No impact assessment was conducted, as the proposal mainly aims at establishing an up to date technical solution for supporting Member States' authorities and Eurojust, without changing the main principles, which underpin the existing legal cooperation framework.

However, the Commission services prepared an analytical supporting document in the form of a staff working document<sup>25</sup>, which accompanies the proposal. The staff working document contains a detailed problem description, looks at the underlying drivers and sets out the objectives of the proposal. It analyses the proposed solution in the light of efficacy, but also potential impacts on fundamental rights.

In the analytical supporting document, the main problems identified were that Eurojust does not receive comprehensive information on cases from the competent national authorities, that the Eurojust CMS does not support the automated identification of links and that cooperation with third country liaison prosecutors is not efficient. As solution it is suggested to clarify and reinforce the obligation to share information on terrorism cases with Eurojust, to modernise the Eurojust CMS and to improve the legal basis for cooperation with third country LPs.

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<sup>24</sup> Cross-border Digital Criminal Justice, Final Report, <https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en>.

<sup>25</sup> SWD(2021) 391.

The improved efficiency of data-exchange between national authorities and Eurojust, including the use of secure communication channel(s) is expected to improve Eurojust's abilities to identify links between ongoing and concluded proceedings significantly. The modernisation of Eurojust's data processing environment has the same objective. The identification of such links is expected to help the judicial authorities at different stages of national proceedings to identify and prosecute successfully suspects of terrorist offences or those involved in other serious crimes and with connection to such suspects. Enabling Eurojust to support the Member States with its full potential should strengthen significantly the judicial response in the fight against terrorism and other forms of serious crime.

- **Fundamental rights**

Given the importance of processing personal data for law enforcement purposes and Eurojust's support activities, the proposal sheds light on the need to ensure full compliance with fundamental rights as enshrined in the Charter of Fundamental Rights. These include the right to the protection of personal data<sup>26</sup> and the right to respect for private life<sup>27</sup>. This is of particular importance since the proposal involves the processing of sensitive personal data relating to criminal investigations and convictions as well as biometric data. Given that it is one of the main objectives of the proposal to enable Eurojust to establish links between terrorism investigations, and this is only possible when Eurojust receives sufficient information, there is a need to increase the amount of data sent to Eurojust. For this data, sufficient safeguards need to be put in place. This includes a strict purpose limitation, especially when it concerns biometric data. The use of secure communication channel(s) and the new modernised CMS will contribute to better protection of the data processed by Eurojust. In the design of the CMS, a focus will be put on data protection by default and design. In addition, the underlying principle of data control by national members and national competent authorities will not be altered. The accompanying staff working document assesses the impact of the proposal on fundamental rights and safeguards in more detail.

#### **4. BUDGETARY IMPLICATIONS**

This proposal would have an impact on Eurojust's budget and its staff needs. It is estimated that a further EUR 33 million would be needed under the legislative financial statement accompanying the proposal.

Based on the analysis of the Digital Criminal Justice study,<sup>28</sup> the costs for a new redesigned CMS are estimated at EUR 31 million including build, operations and maintenance costs for two years.<sup>29</sup> Eurojust has already received EUR 9,5 million through budget transfer from the European Public Prosecutors Office (EPPO) in October 2021, which is why the outstanding costs for the CMS are estimated at EUR 21,5 million. In addition, around EUR 11,5 million will be needed to cover additional staffing needs for the building and operation period of four years. These 25 additional posts would be permanent posts to ensure that Eurojust has the resources to implement its tasks.

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<sup>26</sup> Article 8 of the Charter of Fundamental Rights of the European Union (hereinafter 'the Charter').

<sup>27</sup> Article 7 of the Charter.

<sup>28</sup> Cross-border Digital Criminal Justice, Final Report, <https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en>, p. 244.

<sup>29</sup> The study assumed a maintenance period and a total amount of EUR 39 million. As the current EU budget (multiannual financial framework, MFF) only covers the period until 2027, the maintenance costs for the years 2028 and 2029 were deducted from this amount.

The reinforced tasks for Eurojust under this proposal would therefore require more financial and human resources than compared to the resources earmarked in the 2021-2027 EU budget (MFF).

## **5. OTHER ELEMENTS**

### **• Implementation plans and monitoring, evaluation and reporting arrangements**

The timeline to implement a new Eurojust CMS, secure communication channels and a communication tool to exchange data in a structured manner are based on the analysis in the Digital Criminal Justice study<sup>30</sup>. For the CTR, after a preparatory phase of six months, the procurement and implementation phase would require about 20 months. Therefore, the new technical solution should be operational in about two years after adoption of the proposal. For the establishment of the secure communication channels, an implementing act is needed.

Monitoring and evaluating the digitalisation of Eurojust's data processing will be important to ensure its effectiveness and its compliance with fundamental rights. The monitoring and evaluation will largely be performed under the Eurojust Regulation in force. The Commission will carry out an independent evaluation on the implementation of the Eurojust Regulation and Eurojust's activities by 13 December 2024. The evaluation will be carried out every five years to assess the implementation and impact of the Regulation and the effectiveness and efficiency of Eurojust in line with Article 69(1) of the Eurojust Regulation.

### **• Detailed explanation of the specific provisions of the proposal**

The proposal states that the Eurojust Regulation and Council Decision 2005/671/JHA should be amended to clarify and strengthen Member States' legal obligation to share data on terrorist offences with Eurojust. The conditions under which third country LPs seconded to Eurojust can get access to the CMS in line with the applicable data protection rules should also be clarified. Secure communication channels and a more flexible data processing environment should also be put in place.

Article 1 of the Regulation amends the Eurojust Regulation:

To ensure that Eurojust can fulfil its role in the cooperation with third countries, Article 1(1) of the proposal clarifies in Article 3(5) of the Eurojust Regulation that Eurojust can also support cases between one Member State and a third country or one Member State and an international organisation. The latter would be of particular relevance for the potential cooperation with Interpol or the International Criminal Court, e.g. when it comes to battlefield evidence.

Article 1(2) of the proposal introduces an obligation of the Member States to designate one or more national terrorism correspondents and to provide them with sufficient powers, previously based on Article 2(2) of Council Decision 2005/671/JHA, in the Eurojust Regulation, adding a new paragraph 2a to Article 20 of the Eurojust Regulation. Article 1(3) is a consequential amendment, following the inclusion of the obligation to provide

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<sup>30</sup> Cross-border Digital Criminal Justice, Final Report, <https://op.europa.eu/en/publication-detail/-/publication/e38795b5-f633-11ea-991b-01aa75ed71a1/language-en>, pp. 265 ff.

information in terrorism cases in the Eurojust Regulation and to provide for a more general obligation to provide data in a structured manner to Eurojust in a new Article 22a.

Article 1(4) of the proposal introduces a new Article 21a to the Eurojust Regulation. Article 21a clarifies and strengthens the obligation to provide information on terrorism proceedings, previously based on Article 2(3) in conjunction with Article 2(5) of Council Decision 2005/671/JHA. Article 21a sets out the cases, in which Member States are obliged to provide information on criminal investigations and judicial proceedings for terrorist offences, more precisely. In addition, it identifies the stage of the criminal investigations and national proceedings and the kind of information more clearly.

Article 1(5) of the proposal provides, in a new Article 22a, for the establishment and use of secure communication channels between all Member States and Eurojust when exchanging sensitive data. Article 22a also obliges Member States to provide for semi-automated update of structured data from national databases. Semi-automated means a transmission mode, which is partly automated and partly human controlled. Article 22b and Article 22c lay down a framework for the Commission to adopt implementing acts.

The amendments to Article 23 of the Eurojust Regulation, contained in Article 1(6) of the proposal, aim at making the Eurojust Regulation's data processing rules a bit more flexible. While the main principles remain in place, it will now be possible to store information provided under Article 21 on serious crimes and under Article 21a on counter-terrorism proceedings in a different structure and for a longer period than in the current temporary work files. The proposal deletes the technical details relating to the CMS, to allow the system to be modernised. That said, the principle of temporary storage will also be maintained for these data, even though the retention periods are slightly longer for information under Article 21a. The revised Article 23 sets out the purposes of the CMS more clearly.

Article 1(6) also amends Article 24 of the Eurojust Regulation, maintaining the current principle of information management in the CMS. Article 24(1) underlines the control and responsibility of national members for the data in the CMS. In line with Article 24(2), national members continue to decide the access rights to the information managed by them. Article 24(3) introduces a legal basis for more automated follow-up on cross-links, in case national authorities authorise data sharing with certain parties before a link is detected.

Finally, Article 1(6) brings about consequential amendments to Article 25 of the Eurojust Regulation, which stem from deleting the technical details from Article 23 of the Eurojust Regulation.

Article 1(7) amends Article 27 of the Eurojust Regulation, to allow for the continued handling of data in terrorism cases, in which the cases were concluded under national law. To enable the effective detection of links between investigations and prosecutions, also data about previous investigations, including those which ended in an acquittal or which were concluded in another way, may continued to be processed for a certain amount of time.

Article 1(8) introduces new, longer retention periods for data provided under Article 21a of the Eurojust Regulation to ensure data are stored long enough to enable more effective detection of cross-links in terrorism cases. Data in cases that did not result in a conviction, have shorter retention periods to comply with the proportionality principle.

To clarify the cooperation with third country LPs at Eurojust, Article 1(9) of the proposal provides for a new Article 54a of the Eurojust Regulation, granting third country LPs access

to the CMS. However, the provision does not establish a legal basis for sharing data. The transfer of data to a LP is a data transfer to a third country and therefore always has to be conducted in line with Article 56 of the Eurojust Regulation.

Article 1(10) amends Article 80 of the Eurojust Regulation. It contains transitional provisions, taking into account that it will take a certain amount of time until the necessary technical infrastructure is in place.

Article 1(11) introduces a new Annex III, setting out the information to be sent to Eurojust under Article 21a of the Eurojust Regulation. The list includes biometric data, fingerprints and photographs to ensure the reliable identification of suspects, taking into account the unreliability of alphanumerical information, especially concerning third country nationals. In terrorism proceedings, a photograph is often the only link to the suspects in the investigative phase, which is why facial recognition should also to be included. This information should only to be provided if the national judicial authorities have access to it.

Article 2 amends Council Decision 2005/671/JHA on the following points:

To clarify the relationship between Council Decision 2005/671/JHA and the Eurojust Regulation, the references to Eurojust in the Council Decision are carved out. Article 2(1), Article 2(2) point (a) and point (c) of the proposed Regulation delete Article 1 point (c) and Article 2(2) and (5) from the Decision. In Article 2(2) point (b), the proposal removes the reference to Eurojust from Article 2(3) of the Decision.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EU) 2018/1727 of the European Parliament and the Council and Council Decision 2005/671/JHA, as regards the digital information exchange in terrorism cases**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 85 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure<sup>31</sup>,

Whereas:

- (1) Regulation (EU) 2018/1727 of the European Parliament and of the Council<sup>32</sup> established Eurojust and sets out its tasks, competence and functions.
- (2) Council Decision 2005/671/JHA<sup>33</sup> sets out that in order to combat terrorism it is essential to have the fullest and most up-to-date information possible. It obliges Member States' competent national authorities to provide Eurojust with information on prosecutions and convictions for terrorist offences, which affect or may affect two or more Member States.
- (3) Inconsistencies in the interpretation of Decision 2005/671/JHA cause that information is not shared at the right time, not the appropriate information is shared or information is not shared at all. Eurojust needs to receive sufficient information to identify links between cross-border investigations.
- (4) Assisting the competent authorities of the Member States in ensuring the best possible coordination of investigations and prosecutions, including the identification of links, is an important task of Eurojust under Regulation (EU) 2018/1727. It enables Eurojust to take a

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<sup>31</sup> [....].

<sup>32</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

<sup>33</sup> Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences (OJ L 253, 29.09.2005, p. 22).

more proactive approach and provide better services to the Member States, for example suggesting the initiation of investigations, identifying coordination needs, potential cases of *ne bis in idem* and prosecution gaps.

- (5) In September 2019, Eurojust has set up the European Judicial Counter-Terrorism Register based on Decision 2005/671/JHA with the specific objective to identify potential links between judicial proceedings against suspects of terrorist offences and possible coordination needs stemming from these.
- (6) As the register has been set up after Regulation (EU) 2018/1727 had already been adopted, the European Judicial Counter-Terrorism Register is neither technically well integrated at Eurojust nor legally well integrated in Regulation (EU) 2018/1727. Therefore, it is necessary to remedy that.
- (7) To combat terrorism effectively, efficient exchange of information for investigation or prosecution of terrorist offences between competent authorities and Union agencies is crucial. It is essential to have the most complete and updated information possible. The persistence of the terrorist threat and the complexity of the phenomenon raise the need for an ever greater exchange of information.
- (8) As terrorist organisations are increasingly involved in other forms of serious crimes, such as trafficking in human beings, drug trafficking or money laundering, it is also necessary to cross-check judicial proceedings against such serious crimes.
- (9) In order to enable Eurojust to identify cross-links between cross-border judicial proceedings against suspects of terrorist offences as well as cross-links between judicial proceedings against suspects of terrorist offences and information processed at Eurojust relating to other cases of serious crimes, it is essential that Eurojust receives sufficient information to enable Eurojust to cross-check this data.
- (10) The competent authorities need to know exactly what kind of information they have to transmit to Eurojust, at what stage of the national proceedings and in which cases, in order to provide such data. This is expected to increase the information Eurojust receives significantly.
- (11) Directive (EU) 2017/541 of the European Parliament and of the Council<sup>34</sup> is the reference point for national authorities to define terrorist offences as implemented in national law.
- (12) For the identification of cross-links between terrorism investigations and judicial proceedings against suspects of terrorist offences, reliable identification data is crucial. Due to the uncertainties regarding alphanumeric data especially for third country nationals, it should be possible to exchange biometric data. Due to the sensitive nature of biometric data and the impact processing of biometric data has on the respect for private and family life and the protection of personal data, as enshrined in Articles 7 and 8 of the

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<sup>34</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

Charter of Fundamental Rights of the European Union, a strict necessity test should be applied by the competent authorities and Eurojust in each case.

- (13) As information about existing cross-links to other judicial proceedings is most useful at an early stage of the investigation, it is necessary that the competent authorities provide information to Eurojust as soon as judicial authorities are involved. If the competent national authorities are already aware of cross-links, they should inform Eurojust accordingly.
- (14) In order to ensure the accuracy of the data in the European Judicial Counter-Terrorism Register, to identify cross-links early and to ensure time limits are respected, the competent national authorities should update the information provided regularly. Such updates should include new information relating to the person under investigation, judicial decisions such as pre-trial detention or opening of the court proceedings and judicial cooperation requests or identified links with other jurisdictions.
- (15) Given the sensitive nature of judicial proceedings against suspects of terrorist offences, it is not always possible for the competent national authorities to share the information on terrorist offences at the earliest stage. Such derogations from the obligation to provide information should remain an exception.
- (16) For the purposes of exchanging and processing sensitive data between competent national authorities and Eurojust for protecting such data against unauthorised disclosure and cyber attacks, and without prejudice to future technological developments, secure communication channels, such as the secure communication connections referred to in Article 9 of Council Decision 2008/976/JHA<sup>35</sup> or the decentralised IT system as defined in Regulation (EU) [...] of the European Parliament and of the Council<sup>36</sup> [*Regulation on the digitalisation of judicial cooperation*] should be used. In order to exchange data securely and protect the integrity of the communication and data exchange, the case management system should be connected to such secure communication systems and meet high cybersecurity standards.
- (17) In order to ensure uniform conditions for the implementation of this Regulation as regards the establishment and use of the decentralised IT system for the cases not covered by Regulation (EU) [...] of the European Parliament and of the Council<sup>37</sup> [*Regulation on the digitalisation of judicial cooperation*], implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>38</sup>.

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<sup>35</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

<sup>36</sup> Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in civil, commercial and criminal law cases (OJ L...).

<sup>37</sup> Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in civil, commercial and criminal law cases (OJ L...).

<sup>38</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (18) The transmission of unstructured data makes manual intervention necessary, creates additional administrative burden, and reduces the quality of the results of cross-checking. Therefore, national competent authorities should transmit the data in a structured manner while respecting minimal interoperability requirements as defined in the European Interoperability Framework<sup>39</sup>. In addition, the transfer of data should be automated as much as possible to lessen the administrative burden of national authorities and to ensure the necessary data is provided regularly and quickly.
- (19) A modernized case management system is necessary for Eurojust to process the sensitive personal data securely. The new system needs to integrate and enable the functionalities of the European Judicial Counter-Terrorism Register and improve the capacities of Eurojust regarding link detection.
- (20) It is important to maintain the control and responsibility of the national members for the data, which they receive from the national competent authorities. No operational personal data should be shared with another Member State by default. Operational personal data should only be shared in as far as national competent authorities authorise the exchange of data. In order to digitalise and speed up the follow up on potential links while ensuring full control over the data, handling codes should be introduced.
- (21) Terrorist activities often affect two or more Member States. Terrorism already had a strong transnational component in the past. However, with the use and availability of electronic communication, transnational collaboration between terrorist offenders has increased significantly. Therefore, terrorist offences should be considered per se transnational in their nature, if the specific circumstances of the case do not clearly indicate a purely national character.
- (22) Investigations and prosecutions in terrorism cases are often impeded by the lack of information exchange between national investigation and prosecution authorities. In order to be able to cross check new terrorist investigations also with previous investigations and establish potential links, it is necessary to store the data on any previous investigations, not only on convictions and to extend the time limits for storing data in the European Judicial Counter-Terrorism Register. However, it is necessary to ensure that such data is processed for prosecution purposes only. The information may not be used for anything else but identifying links with ongoing investigations and prosecutions and for the support of those investigations and prosecutions.
- (23) Eurojust has concluded twelve cooperation agreements with third countries, which allow for the transfer of operational personal data and the secondment of a third country liaison prosecutor to Eurojust. Moreover, the Trade and Cooperation Agreement between the European Union and the United Kingdom<sup>40</sup> allows for the secondment of a liaison prosecutor. In March 2021, the Council gave the Commission a mandate<sup>41</sup> to negotiate

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<sup>39</sup> <https://joinup.ec.europa.eu/collection/nifo-national-interoperability-framework-observatory/european-interoperability-framework>.

<sup>40</sup> Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (OJ L 149, 30.4.2021, p.10).

<sup>41</sup> Council Decision (EU) 2021/7072 of 16 March 2021.

further cooperation agreements on the cooperation between Eurojust and thirteen further third states.

- (24) While Regulation (EU) 2018/1727 provides a legal basis for the cooperation and exchange of data with third countries, it does not contain any rules on the formal and technical aspects of the cooperation with third country liaison prosecutors seconded to Eurojust, in particular their access to the case management system. In the interest of legal certainty, Regulation (EU) 2018/1727 should provide an explicit legal basis for the cooperation between Eurojust and the third country liaison prosecutors and their access to the Eurojust case management system. Eurojust should ensure adequate safeguards and security measures for the protection of data and fundamental rights through the technical setup and internal rules.
- (25) In the interest of clarity, the relationship between the exchange of information between national competent authorities on terrorism cases with Eurojust under Decision 2005/671/JHA and Regulation (EU) 2018/1727 should be clarified. Therefore, the relevant provisions should be deleted from Decision 2005/671/JHA and be added to Regulation (EU) 2018/1727.
- (26) While some Member States' competent national authorities are already connected to secure telecommunication connection as referred to in Article 9 of Council Decision 2008/976/JHA<sup>42</sup>, many competent authorities are not yet connected to secure telecommunication connection or secure communication channels. In order to ensure that the Member States have sufficient time to provide such a connection for the competent authorities, a transitional period for implementation should be granted.
- (27) [In accordance with Articles 1, 2 and 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.] OR [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...,] its wish to take part in the adoption and application of this Regulation.]
- (28) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (29) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered an opinion on XX/XX 20XX,

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<sup>42</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, (OJ L 348, 24.12.2008, p. 130).

HAVE ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Regulation (EU) 2018/1727**

Regulation (EU) 2017/1727 is amended as follows:

(1) in Article 3, paragraph 5 is replaced by the following:

“5. Eurojust may also assist with investigations and prosecutions that only affect a Member State and a third country or a Member State and an international organisation, provided that a cooperation agreement or arrangement establishing cooperation pursuant to Article 52 has been concluded with that third country or that international organisation, or provided that in a specific case there is an essential interest in providing such assistance.”;

(2) in Article 20, the following paragraph 2a is inserted:

“2a. Each Member State shall designate a competent national authority as Eurojust national correspondent for terrorism matters. This national correspondent for terrorism matters shall be a judicial or other competent authority. Where the national legal system requires, more than one authority can be designated. The national correspondent for terrorism matters shall have access to all relevant information in accordance with Article 21a(1). It shall be competent to collect such information and to send it to Eurojust.”;

(3) Article 21 is amended as follows:

(a) paragraph 9 is replaced by the following:

“9. This Article shall not affect other obligations regarding the transmission of information to Eurojust.”;

(b) paragraph 10 is deleted;

(4) the following Article 21a is inserted:

*“Article 21a*

**Exchange of information on terrorism cases**

1. The competent national authorities shall inform their national members of any ongoing or concluded criminal investigations supervised by judicial authorities, prosecutions, court proceedings and court decisions on terrorist offences as soon as judicial authorities are involved.
2. Terrorist offences for the purpose of this Article are offences referred to in Directive (EU) 2017/541 of the European Parliament and of the Council\*. The obligation referred to in paragraph 1 shall apply to all terrorist offences regardless whether there is a known

link to another Member State or third country, unless the case, due to its specific circumstances, clearly affects only one Member State.

3. The information transmitted in accordance with paragraph 1 shall include the operational personal data and non-personal data listed in Annex III.
4. The competent national authorities shall inform their national member without delay about any relevant changes in the national proceedings.

Without prejudice to the first subparagraph, the national authorities shall review and provide an update on the information transmitted under paragraph 1 at least every three months.

5. Paragraph 1 shall not apply where the sharing of information would jeopardise current investigations or the safety of an individual, or when it would be contrary to essential interests of the security of the Member State concerned.

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\* Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).”;

- (5) the following Articles 22a, 22b and 22c are inserted:

*“Article 22a*

**Secure digital communication and data exchange between competent national authorities and Eurojust**

1. The communication between the competent national authorities and Eurojust under this Regulation shall be carried out through the decentralised IT system as defined in Regulation (EU) [.../...] of the European Parliament and of the Council\* [*Regulation on the digitalisation of judicial cooperation*].
2. Where exchange of information in accordance with paragraph 1 is not possible due to the unavailability of the decentralised IT system or due to exceptional circumstances, it shall be carried out by the swiftest, most appropriate alternative means. Member States and Eurojust shall ensure that the alternative means of communication are reliable and provide an equivalent level of security.
3. The competent national authorities shall transmit the information in accordance with Articles 21 and 21a to Eurojust in a semi-automated manner from national registers and in a structured way determined by Eurojust.

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\* [*Regulation (EU) [.../...] of the European Parliament and of the Council on the digitalisation of judicial cooperation*](OJ L...).

## Article 22b

### Adoption of implementing acts by the Commission

1. The Commission shall adopt the implementing acts necessary for the establishment and use of the decentralised IT system for communication under this Regulation, setting out the following:
  - (a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;
  - (b) the technical specifications for communication protocols;
  - (c) the information security objectives and relevant technical measures ensuring minimum information security standards and a high level of cybersecurity standards for the processing and communication of information within the decentralised IT system;
  - (d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
  - (e) the establishment of a steering committee comprising representatives of the Member States to ensure the operation and maintenance of the decentralised IT system in order to meet the objectives of this Regulation.
2. The implementing acts referred to in paragraph 1 shall be adopted by [2 years after entry into force] in accordance with the examination procedure referred to in Article 22c(2).

## Article 22c

### Committee Procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council\*.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and Article 5(4), third subparagraph, of Regulation (EU) No 182/2011 shall apply.

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\* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).”;

- (6) Articles 23, 24 and 25 are replaced by the following :

*“Article 23*

**Case Management System**

1. Eurojust shall establish a case management system for the processing of operational personal data listed in Annex II, the data listed in Annex III and non-personal data.
2. The purposes of the case management system shall be to:
  - (a) support the management and coordination of investigations and prosecutions for which Eurojust is providing assistance;
  - (b) ensure secure access to and exchange of information on on-going investigations and prosecutions;
  - (c) allow for the cross-checking of information and establishing cross-links;
  - (d) allow for the extraction of data for operational and statistical purposes;
  - (e) facilitate monitoring to ensure that the processing of operational personal data is lawful and complies with this Regulation and the applicable data protection rules.
3. The case management system may be linked to the secure telecommunications connection referred to in Article 9 of Council Decision 2008/976/JHA\* and other secure communication channel(s) in accordance with applicable Union law.
4. In the performance of their duties, national members may process personal data on the individual cases, on which they are working, in accordance with this Regulation or other applicable instruments.

They shall allow the Data Protection Officer to have access to the personal data processed in the case management system.
5. For the processing of operational personal data, Eurojust may not establish any automated data file other than the case management system.

The national members may, however, temporarily store and analyse personal data for the purpose of determining whether such data are relevant to Eurojust’s tasks and can be included in the operational data management system. That data may be held for up to three months.

*Article 24*

**Management of the information in the case management system**

1. The national member shall store the information transmitted to him or her in accordance with this Regulation or other applicable instruments in the case management system.

The national member shall be responsible for the management of the data processed by that national member.

2. The national member shall decide, on a case-by-case basis, whether to keep access to the information restricted or to give access to it or to parts of it to other national members, to liaison prosecutors seconded to Eurojust, to authorised Eurojust staff or to any other person working on behalf of Eurojust who has received the necessary authorisation from the Administrative Director.
3. The national member shall indicate, in general or specific terms, any restrictions on the further handling, access and transfer of the information if a cross-link referred to in Article 23(2), point (c), has been identified.

#### *Article 25*

##### **Access to the case management system at national level**

1. In so far as they are connected to the case management system, persons referred to in Article 20(3) shall only have access to:
  - (a) data controlled by the national member of their Member State, unless the national member, who has decided to introduce the data in the case management system, expressly denied such access;
  - (b) data controlled by national members of other Member States and to which the national member of their Member State has received access, unless the national member who controls the data expressly denied such access.
2. The national member shall, within the limitations provided for in paragraph 1 of this Article, decide on the extent of access, which is granted in their Member State to the persons referred to in Article 20(3) in so far as they are connected to the case management system.
3. Each Member State shall decide, after consultation with its national member, on the extent of access, which is granted in that Member State to the persons referred to in Article 20(3) in so far as they are connected to the case management system.

Member States shall notify Eurojust and the Commission of their decision regarding the implementation of the first subparagraph. The Commission shall inform the other Member States thereof.

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\* Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).”;

- (7) Article 27 is amended as follows:
  - (a) paragraph 4 is replaced by the following:

“4. Eurojust may process special categories of operational personal data in accordance with Article 76 of Regulation (EU) 2018/1725. Where such other data refer to witnesses

or victims within the meaning of paragraph 2 of this Article, the decision to process them shall be taken by the national members concerned.”;

(b) the following paragraph 5 is added:

“5. Where operational personal data is transmitted in accordance with Article 21a, Eurojust may process the operational personal data listed in Annex III of the following persons:

- (a) persons to whom, in accordance with the national law of the Member State concerned, there are serious grounds for believing that they have committed or are about to commit a criminal offence in respect of which Eurojust is competent;
- (b) persons who have been convicted of such offence.

Eurojust may continue to process the operational personal data referred to in point (a) of the first subparagraph also after the proceedings have been concluded under the national law of the Member State concerned, even in case of an acquittal. Where the proceedings did not result in a conviction, processing of personal data may only take place in order to identify links with other ongoing or concluded investigations and prosecutions as referred to in Article 23(2), point (c).”;

(8) Article 29 is amended as follows:

(a) the following paragraph 1a is inserted:

“1a. Eurojust shall not store operational personal data transmitted in accordance with Article 21a beyond the first applicable date among the following dates:

- (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) 5 years after the date on which the judicial decision of the last of the Member States concerned by the investigation or prosecution became final, 3 years in case of an acquittal.”;

(b) paragraphs 2 and 3 are replaced by the following:

“2. Observance of the storage deadlines referred to in paragraphs 1 and 1a of this Article shall be reviewed constantly by appropriate automated processing conducted by Eurojust, particularly from the moment in which Eurojust ceases to provide support.

A review of the need to store the data shall also be carried out every three years after they were entered.

If operational personal data referred to in Article 27(4) are stored for a period exceeding five years, the EDPS shall be informed thereof.

3. Before one of the storage deadlines referred to in paragraphs 1 and 1a expires, Eurojust shall review the need for the continued storage of the operational personal data where and as long as this is necessary to perform its tasks.

It may decide by way of derogation to store those data until the following review. The reasons for the continued storage shall be justified and recorded. If no decision is taken on the continued storage of operational personal data at the time of the review, those data shall be deleted automatically.”;

(9) in Section III, the following Article 54a is inserted:

“*Article 54a*

### **Third country liaison prosecutors**

1. A liaison prosecutor from a third country may be seconded to Eurojust based on a cooperation agreement concluded before 12 December 2019 between Eurojust and that third country or an international agreement between the Union and the third country pursuant to Article 218 TFEU allowing for the secondment of a liaison prosecutor.
2. The rights and obligations of the liaison prosecutor shall be set out in the cooperation agreement or international agreement referred to in paragraph 1 or working arrangement concluded in accordance with Article 47(3).
3. Liaison prosecutors seconded to Eurojust shall be granted access to the case management system for the secure exchange of data.

Transfers of operational personal data to third country liaison prosecutors through the case management system may only take place under the rules and conditions set out in this Regulation, the agreement with the respective country or other applicable legal instruments.

Article 24(1), the second sentence and Article 24(2) shall apply *mutatis mutandis* to liaison prosecutors.

The College shall lay down the detailed conditions of access.”;

(10) In Article 80, the following paragraphs 8, 9 and 10 are added:

“8. Eurojust may continue to use the case management system composed of temporary work files and of an index until [*the first day of the month following the period of two years after the adoption of this Regulation*], if the new case management system is not in place yet.

9. The competent authorities and Eurojust may continue to use other channels of communication than referred to in Article 22a(1) until [*the first day of the month following the period of two years after the adoption of the implementing act referred to in Article 22b of this Regulation*], if those channels of communication are not available for direct exchange between them yet.

10. The competent authorities may continue to provide information in other ways than semi-automatically in accordance with Article 22a(3) until [*the first day of the month following the period of two years after the adoption of the implementing act referred to in Article 22b of this Regulation*], if the technical requirements are not in place yet.”;

(11) the following Annex III is added:

“Annex III:

- (a) information to identify the suspect, accused, convicted or acquitted person:
- surname (family name);
  - first names (given name, alias);
  - date of birth;
  - place of birth (town and country);
  - nationality or nationalities;
  - identification document,
  - gender;
- (b) information on the terrorist offence:
- legal qualification of the offence under national law;
  - applicable form of serious crime from the list referred to in Annex I;
  - affiliation with terrorist group;
  - type of terrorism, such as jihadist, separatist, left-wing, right-wing;
  - brief summary of the case;
- (c) information on the national proceedings:
- status of the national proceedings;
  - responsible public prosecutor’s office;
  - case number;
  - date of opening formal judicial proceedings;
  - links with other relevant cases;
- (d) information to identify the suspect, where available, for the national competent authorities:
- fingerprint data that have been collected in accordance with national law during criminal proceedings;
  - photographs.”.

*Article 2*

**Amendments to Decision 2005/671/JHA**

Decision 2005/671/JHA is amended as follows:

- (1) in Article 1 point (c) is deleted.
- (2) Article 2 is amended as follows:
  - (a) paragraph 2 is deleted;
  - (b) paragraph 3 is replaced by the following:

“3. Each Member State shall take the necessary measures to ensure that at least the information referred to in paragraph 4 concerning criminal investigations for terrorist offences which affect or may affect two or more Member States, gathered by the relevant authority, is transmitted to Europol, in accordance with national law and with Regulation (EU) 2016/794 of the European Parliament and of the Council \*.

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\* Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) (OJ L 135, 24.5.2016, p. 53).”;

- (c) paragraph 5 is deleted.

### *Article 3*

#### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

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## 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

### 1.1. Title of the proposal/initiative

Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) 2017/1727 and Council Decision 2005/671/JHA, as regards the digital information exchange in terrorism cases

### 1.2. Policy area(s) concerned

Policy area: Justice and fundamental rights

Activity: Investing in people, social cohesion and values

071007: European Union Agency for Criminal Justice Cooperation (Eurojust)

### 1.3. The proposal/initiative relates to:

a new action

a new action following a pilot project/preparatory action<sup>43</sup>

the extension of an existing action

a merger or redirection of one or more actions towards another/a new action

### 1.4. Objective(s)

#### 1.4.1. General objective(s)

Eurojust has been established as an intergovernmental body to coordinate investigations of serious cross-border crime in Europe and beyond by Council Decision 2002/187/JHA. The Treaty of Lisbon has abolished the pillar structure of the European Union and aligned the area of Freedom, Security and Justice with the *acquis communautaire*. With Regulation (EU) 2017/1727 a new legal framework for a new European Union Agency for Criminal Justice Cooperation (Eurojust) has been established, as required under Article 85 TFEU.

Combating terrorism has been in Eurojust's mandate since its set-up in 2002. One of the key elements of Eurojust's work in this field has been the creation of the European Judicial Counter-Terrorism Register (CTR) in September 2019. Legal basis for the CTR is Council Decision 2005/671/JHA. As the Eurojust Regulation was conceived and agreed before the establishment of the CTR, the CTR and its functions were not foreseen in the Eurojust Regulation. In addition, the technically

<sup>43</sup> As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

outdated Eurojust Case Management System (CMS) is not able to integrate and support a proactive tool such as the CTR.

In response to this pressing operational needs the Commission Work Programme for 2020 announced a legislative initiative on digital information exchange on cross-border terrorism cases as part of the digital judicial cooperatin package.

The general objective is to enable Eurojust to fulfil its stronger, more pro-active role in supporting the Member States in their investigations, especially in cases of terrorism, in accordance with Eurojust's mission to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime.

#### 1.4.2. *Specific objective(s)*

The specific objectives derive from the general objective as outlined above:

##### Specific objective No. 1:

To enable Eurojust to identify links more efficiently and to proactively provide feedback to the Member States.

##### Specifiv objective No. 2:

To render the data exchange between Member States, Eurojust and 3rd countries more efficient and secure.

### 1.4.3. *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

The initiative is expected to legally and technically integrate the CTR in the CMS at Eurojust in order to enable Eurojust to identify links between parallel cross-border proceedings in terrorism cases and other cases of serious crime and to give feedback to the Member States.

### 1.4.4. *Indicators of performance*

*Specify the indicators for monitoring progress and achievements.*

- The amount of information sent by each Member State for the CTR in relation to overall volume and quality of information sent by Member States;
- Number of links established in counter-terrorism cases and serious crime cases;
- Number of feedback send from Eurojust to the Member States;
- Number of operative cases supported with the involvement of third states;

## 1.5. **Grounds for the proposal/initiative**

### 1.5.1. *Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative*

The roll-out of the implementation of the legislative initiative requires technical and procedural measures at EU and national level, which should start when the revised legislation enters into force.

The main requirements following entry into force of the proposal are as follows:

- Eurojust to implement a new modern Eurojust CMS, integrating the CTR and ensuring ability to connect to secure communication channels and process structured data.
- Eurojust and Member States to ensure the availability of secure communication channels.
- Member States to ensure availability of necessary infrastructure to upload data semi-automatically and structured.

Based on the findings of the Digital Criminal Justice study and due to the urgency of the renewal of a new CMS, Eurojust took already first preliminary steps for the renewal. It mandated a market analysis study, inquiring in depth the most appropriate solution.

At the end of 2021, Eurojust was attributed EUR 9,5 million unspent funds from the European Public Prosecutors Office (EPPO), which will be used to prepare the development of the CMS further. Eurojust will mandate consultancy services to support the analysis, design and development phase. For these services, Eurojust anticipates expenditures of EUR 2,3 million. For the following purchase of infrastructure and off-the-shelf software and installation services, EUR 5,2 million are anticipated. Finally, Eurojust has estimated to spend EUR 2 million on consultancy services to provide programme and project management, administrative changes and governance.

- 1.5.2. *Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.*

Activities of criminals are currently more complex, diverse and international than ever before. Large scale terrorist and criminal networks pose a significant threat to the internal security of the EU and its citizens. Criminal activities have become more and more poly-criminal and cross-border of nature. The national judicial authorities cannot longer work in isolation but need to cooperate with each other and with Eurojust.

For the prosecution of terrorism, efficient exchange of information between competent authorities and Union agencies, is crucial. With the new rise of foreign terrorist fighters, the importance of sharing information between Member States and with Eurojust has only become more evident.

The current disconnect between Eurojust's casework and the information received through the CTR prevents Eurojust from providing timely and proactive feedback to national authorities in cross-border terrorism cases, missing potential connections and the identification of duplicate investigations and prosecutions that should be connected. Such disconnect may also hamper Eurojust's efforts to prevent jurisdiction conflicts and *ne bis in idem* cases

The initiative is expected to enable Eurojust to identify and follow up links between cases of terrorism more proactively and give timely feedback to the Member States. These tasks and services can be only performed at an EU level due to their transnational nature. Together with the Member State and its international partners, Eurojust will thereby make Europe a safer place for all its citizens.

The proposal builds on the need to address continuously-evolving transnational security challenges beyond the national level. Practice has shown that for effective criminal justice, quick and secure data exchange is crucial. Without the adequate IT infrastructure neither secure, structure exchange of data, nor proper cross-checking of data is possible. Therefore, the structured identification of links between cross-border cases is also not possible without secure communication channels and a modern Case Management System. This proposal also builds on the lessons learned and progress achieved since the entry into application of the 2019 Eurojust Regulation. This affects mostly the increasing important role that Eurojust has as interconnector between Member States' and third countries in judicial cooperation.

### 1.5.3. *Lessons learned from similar experiences in the past*

The proposal builds on the need to coordinate the judicial response to continuously-evolving transnational crime beyond the national level alone.

Europe faces a security landscape in flux, with evolving and increasingly complex security threats. Criminals exploit the advantages that the digital transformation, new technologies, globalisation and mobility bring about, including the inter-connectivity and blurring of the boundaries between the physical and digital world. The COVID-19 crisis only added to this, as criminals quickly seized the opportunities to exploit the crisis by adapting their modes of operation or developing new criminal activities.

The pandemic showed the overall importance of digitalisation of judicial cooperation for the functioning of the judiciary. In addition, the judicial cooperation with third countries in criminal investigations for terrorist offences and other international core crimes became more relevant, especially with regard to the crimes committed by Daesh.

The evolving criminal activities call for effective EU level support to the work of national law judicial authorities. Member States' law judicial authorities have increasingly made use of the support and expertise that Eurojust offers to counter serious crime and terrorism. This proposal also builds on the lessons learned and progress achieved since the entry into application of the 2018 Eurojust Regulation and the establishment of the CTR. The role third countries would play was not foreseeable when the co-legislators negotiated the current Eurojust Regulation.

### 1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

The reinforcement of judicial cooperation in criminal matters is a crucial part of creating an area of freedom, security and justice.

The improving the digital exchange of data on terrorism cases and the modernisation of Eurojust's CMS is in line with the EU Security Union Strategy<sup>44</sup>, the Counter-Terrorism Agenda for the EU,<sup>45</sup> the Communication on the Digitalisation of Justice<sup>46</sup> and the EU Strategy to tackle Organised Crime.<sup>47</sup>

The Commission Communication on the EU Security Union Strategy, published in July 2020, underlined the connection between internal and external security and the importance of cooperation in order to protect citizen's rights effectively. The recent Counter-Terrorism Agenda for the EU confirmed that terrorist crimes continue to be a major challenge for the law enforcement and prosecution authorities of the Member States, requiring further efforts to strengthen collaboration between them, supported

<sup>44</sup> Commission Communication on the EU Security Union Strategy, COM(2020) 605 final.

<sup>45</sup> Commission Communication on a Counter-Terrorism Agenda for the EU, COM(2020) 795 final

<sup>46</sup> Commission Communication on the Digitalisation of justice in the European Union - A toolbox of opportunities, COM(2020) 710 final, 2.12.2020.

<sup>47</sup> Commission Communication on the EU Strategy to tackle Organised Crime 2021-2025, COM(2021) 170 final.

by Europol and Eurojust. In the Communication on the EU Strategy to tackle Organised Crime, the Commission expressed its support modernising Eurojust's case management system to help Eurojust provide feedback to national authorities and develop judicial links between ongoing investigations.

The Commission Communication on Digitalisation of Justice refers to the present proposal as part of the overall toolbox of opportunities for further digitalisation of justice. This proposal is included in the Commission's Work Programme for 2021. The proposal also relates to the current Commission proposal for a Regulation on a computerised system for the communication in cross-border civil and criminal proceedings (e-CODEX) and amending Regulation (EU) 2018/1726, currently negotiated between the co-legislators.

*1.5.5. Assessment of the different available financing options, including scope for redeployment*

Since the Eurojust Regulation entered into force, the trend has been towards a growth of the agency's data flows and of the demand on its services. The past budgets, however, have never included financial resources to revamp the outdated Eurojust CMS.

The proposal will introduce new tasks in Eurojust Regulation and will also clarify other tasks, aiming at making Eurojust fit for the digital age. To implement the digitalisation of judicial cooperation will not be possible to implement without a new CMS, backed by financial and human reinforcements.

At the end of 2021, Eurojust was attributed EUR 9,5 million unspent funds from the European Public Prosecutors Office (EPPO), to prepare the development and implementation of the new CMS. The rest of the expenditure will be financed from the margin under the heading 2b of the MFF.

## 1.6. Duration and financial impact of the proposal/initiative

**limited duration**

- in effect from [DD/MM]YYYY to [DD/MM]YYYY
- Financial impact from YYYY to YYYY

**unlimited duration**

- Implementation with a start-up period from YYYY to YYYY,
- followed by full-scale operation.

## 1.7. Management mode(s) planned<sup>48</sup>

**Direct management** by the Commission through

- executive agencies

**Shared management** with the Member States

**Indirect management** by entrusting budget implementation tasks to:

international organisations and their agencies (to be specified);

the EIB and the European Investment Fund;

bodies referred to in Articles 70 and 71;

public law bodies;

bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

### Comments

The figures on financial and human resources combine the foreseen total amount for the implementation of the CTR, the new CMS and other requirements stemming from the Digital Criminal Justice planned for the period between 2024 and 2027, minus the EUR 9,5 million already allocated to Eurojust in the second half of 2021. It includes additional financial needs

<sup>48</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:  
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

for technical implementation (including operative and maintenance costs) as well as staff requirements. The costs for the CMS include the CTR because the CTR is to be integral part of the CMS. This technical integration of the CTR is one of the objectives of the initiative. In addition, the new CMS is supposed to include e.g. an integration layer, which ensures interoperability as required in the Digital Criminal Justice study.

## 2. MANAGEMENT MEASURES

### 2.1. Monitoring and reporting rules

*Specify frequency and conditions.*

Monitoring and evaluating the implementation of the digitalisation of the data exchange of the agency will be important to ensure the effectiveness of Eurojust. The monitoring and reporting of the proposal will follow the principles outlined in the Eurojust Regulation<sup>49</sup> and in line with the Common Approach on decentralised agencies<sup>50</sup>.

In addition to the horizontal governance rules applicable to agencies, Eurojust must notably send each year to the Commission, the European Parliament and the Council a Single Programming Document (SPD) containing multi-annual and annual work programmes and resources programming. The SPD sets out the objectives, expected results and performance indicators to monitor the achievement of the objectives and the results.

Eurojust also reports on its work in an elaborate annual report. Eurojust transmits this annual report to the Parliament, to the Council and to national parliaments. In addition, Eurojust informs the parliament and the national parliaments on working arrangements concluded with third parties.

An external independent evaluation of the implementation of the Regulation and the activities of Eurojust shall be commissioned by the Commission by 13 December 2024 and every five years thereafter in order to evaluate the implementation and impact of the regulation and the effectiveness and efficiency of Eurojust, Article 69 (1) of the Eurojust Regulation.

### 2.2. Management and control system(s)

#### 2.2.1. *Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed*

Considering that the proposal impacts the annual EU contribution to Eurojust, the EU budget will be implemented via indirect management.

Pursuant to the principle of sound financial management, the budget of Eurojust shall be implemented in compliance with effective and efficient internal control.

Regarding ex-post controls, Eurojust, as a decentralised agency, is notably subject to:

- internal audit by the Internal Audit Service of the Commission;

<sup>49</sup> Regulation (EU) 2017/1727.

<sup>50</sup> [https://europa.eu/european-union/sites/default/files/docs/body/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](https://europa.eu/european-union/sites/default/files/docs/body/joint_statement_and_common_approach_2012_en.pdf).

- annual reports by the European Court of Auditors, giving a statement of assurance as to the reliability of the annual accounts and the legality and regularity of the underlying transactions;
- annual discharge granted by the European Parliament;
- possible investigations conducted by OLAF to ensure, in particular, that the resources allocated to agencies are put to proper use;
- finally, the European Ombudsman provides a further layer of control and accountability at Eurojust.

2.2.2. *Information concerning the risks identified and the internal control system(s) set up to mitigate them*

No specific risks in management and control systems were identified at this stage. Eurojust is subject to administrative controls including budgetary control, internal audit, annual reports by the European Court of Auditors and the annual discharge for the execution of the EU budget as set out above.

2.2.3. *Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)*

The ratio of “control costs/payment of the related funds managed” is reported on by the Commission. The 2020 AAR of DG JUST reports 0.74% for this ratio in relation to Indirect Management Entrusted Entities and Decentralised Agencies, including Eurojust.

The European Court of Auditors (ECA) confirmed the legality and regularity of Eurojust’s annual accounts for 2019, which implies an error rate below 2%. There are no indications that the error rate will worsen in the coming years. For 2020 it is also provisionally confirmed based on the verification of the Eurojust annual accounts by an independent external auditor. ECA’s opinion on the reliability of the accounts is subject to confirmation by ECA of the reliability of the independent auditor’s results and it is still pending.

**2.3. Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.*

The measures related to combating fraud, corruption and other illegal activities are outlined, inter alia, in Article 75 Eurojust Regulation. Eurojust shall notably participate in fraud prevention activities of the European Anti-fraud Office and inform the Commission without delay on cases of presumed fraud and other financial irregularities

### 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

#### 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. <sup>51</sup>	from EFTA countries <sup>52</sup>	from candidate countries <sup>53</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
2b	071007	Diff./Non-diff.	NO	NO	YES	NO

- New budget lines requested

*In order of multiannual financial framework headings and budget lines.*

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

<sup>51</sup> Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

<sup>52</sup> EFTA: European Free Trade Association.

<sup>53</sup> Candidate countries and, where applicable, potential candidates from the Western Balkans.

### 3.2. Estimated financial impact of the proposal on appropriations

#### 3.2.1. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	Number	Heading 7-Investing in People, Social Cohesion and Values
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[Body]: Eurojust			Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
Title 1 Staff expenditures	Commitments	(1)	1,125	2,683	3,376	3,981	<b>11,165</b>
	Payments	(2)	1,125	2,683	3,376	3,981	<b>11,165</b>
Title 2: Infrastructure and operating expenditures	Commitments	(1a)					
	Payments	(2a)					
Title 3: Operational expenditures <sup>54</sup>	Commitments	(3a)	1,033	8,128	7,027	5,390	<b>21,577</b>
	Payments	(3b)	0,578	4,780	6,458	9,771	<b>21,577</b>
<b>TOTAL appropriations for Eurojust</b>	Commitments	=1+1a +3a	2,158	10,811	10,403	9,371	<b>32,743</b>
	Payments	=2+2a +3b	1,693	7,463	9,834	13,752	<b>32,743</b>

<sup>54</sup> Technical costs under Title 3 include operating and maintenance costs as all costs related to the CMS are currently committed under Title 3.

<b>Heading of multiannual financial framework</b>	<b>7</b>	‘Administrative expenditure’
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EUR million (to three decimal places)

			Year 2024	Year 2025	Year 2026	Year 2027	<b>TOTAL</b>
DG: JUST							
• Human Resources			0,238	0,238	0,238	0,238	<b>0,952</b>
• Other administrative expenditure			<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL DG JUST</b>	Appropriations						

<b>TOTAL appropriations under HEADING 7 of the multiannual financial framework</b>	(Total commitments = Total payments)	0,238	0,238	0,238	0,238	<b>0,952</b>
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EUR million (to three decimal places)

		Year 2024 <sup>55</sup>	Year 2025	Year 2026	Year 2027	<b>TOTAL</b>
<b>TOTAL appropriations</b>	Commitments	2,396	11,049	10,641	9,609	<b>33,695</b>

<sup>55</sup> Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

<b>under HEADINGS 1 to 7</b> of the multiannual financial framework	Payments	1,931	7,701	10,072	13,99	<b>33,695</b>
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3.2.2. *Estimated output funded with operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs			Year 2024		Year 2025		Year 2026		Year 2027		TOTAL	
	Type <sup>56</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1 <sup>57</sup> To enable Eurojust to identify links between parallel cross-border investigations and prosecutions regarding terrorist offences more efficiently and to provide feedback on these links to the Member States												

<sup>56</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>57</sup> As described in point 1.4.2. ‘Specific objective(s)’

- Output	Identifying links between cross border cases established by Eurojust		1,835		9,190		8,843		7,965		27,832
SPECIFIC OBJECTIVE No 2 To render the data exchange between Member States, Eurojust and 3rd countries more efficient and secure.											
- Output	Personal data securely received from Member States to Eurojust		0,108		0,541		0,520		0,469		1,637
- Output	Personal data transferred in a structured, semi automated way		0,108		0,541		0,520		0,469		1,637
- Output	Information exchanged with 3 <sup>rd</sup> countries		0,108		0,541		0,520		0,469		1,637
Subtotal for specific objective No 2			0,324		1,622		1,560		1,406		4,911
<b>TOTAL COST</b>			<b>2,158</b>		<b>10,811</b>		<b>10,403</b>		<b>9,371</b>		<b>32,743</b>

### 3.2.3. Summary of estimated impact on administrative appropriations

#### 3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:<sup>58</sup>

EUR million (to three decimal places)

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
--	--------------	--------------	--------------	--------------	-------

Temporary agents (AD Grades)	0,952	2,337	2,943	3,289	9,521
Temporary agents (AST grades)	0,173	0,346	0,433	0,0,692	1,644
Contract staff					
Seconded National Experts					

<b>TOTAL</b>	<b>1,125</b>	<b>2,683</b>	<b>3,376</b>	<b>3,981</b>	<b>11,165</b>
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Staff requirements<sup>59</sup> (FTE):

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
--	--------------	--------------	--------------	--------------	-------

Temporary agents (AD Grades)	11	16	18	20	20
Temporary agents (AST grades)	2	2	3	5	5
Contract staff					
Seconded National Experts					

<sup>58</sup> The costs estimates for staff are cumulative and have been made on the basis of the average costs for temporary and contract staff, indexed to the correction coefficient applicable for the Netherlands as of 07/2020 (113,9%).

<sup>59</sup> Cumulative. The number indicated under each year is the number of old staff from the previous year(s) and newly recruited staff. The total number of new staff (25) will be reached in 2027.

TOTAL	13	18	21	25	25
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Recruitment dates are planned at mid-year. For each new year, 50% of the newly recruited staff costs have been estimated. No assumptions have been made for a potential increase of the salary indexation or the correction coefficient applicable to the Netherlands.

Details of staff increase:

Specific objective	Additional staff
Specific objective no1: To enable Eurojust to identify links more efficiently and to provide proactive feedback to the Member States.	<p>2* Case Data Analysts are needed to ensure CMS compliance with the Eurojust Regulation and agreements (with Member states, 3rd Countries, Agencies) and the EU existing legal framework on information exchange, digitalisation and interoperability</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +1; 2025: +1</p>
	<p>2* Data Management Officers are needed to participate in the evaluation and selection of the CMS, to assist in the business transformation, requirements analysis and design phases, implementation and acceptance of the new CMS and the integration with other systems (e.g. Hit/No-Hit), projects (e.g. e-CODEX, e-EDES) and the Interoperability Framework projects (SIS II, etc.) and to assure the correct policies and procedures are put in place to govern data created with the implementation of new systems</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +1; 2025: +1</p>
	<p>2*Case Support Assistants are needed to manage the significant increase of data volume expected, to perform operational data processing in the CMS (including translations), to manage overview of the life cycle of open cases and to produce ad hoc and regular reports (monthly, annual) and statistics</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2026: +1; 2027: +1</p>
	<p>1*Data Management Officer is needed to perform data quality review processes aiming to ensure Eurojust data is high quality, current, complete, unambiguously understood, consistent and available when required</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2026: +1</p>
	<p>1*Case Data Analyst is needed due to the expected increase of notifications sent to Eurojust to identify links among ongoing judicial proceedings based</p>

	<p>on the analysis of the information Eurojust receives from Europol, OLAF, the EPPO and national authorities and to analyse large set of data for judicial coordination purposes</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2026: +1</p>
	<p>1*Case Data Analyst is needed to draft (joint) requests addressed to Member States based on the analysis of information exchanged covering all the operational functions listed in article 4(2) of the Eurojust, to detect recurring issues in the use of judicial cooperation tools, to draft suggestions to extend cases to other Member States and opinions on recurrent refusals or difficulties in judicial cooperation and on best place to prosecute</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2027: +1</p>
	<p>1*Programme Manager and 1*Project Manager are needed to establish the governance and management of the programme (including communication and risk management, monitoring and progress reporting to the programme board and stakeholders) from set up until closure and to support preventive and evaluative maintenance of the new system</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +2</p>
	<p>1*IT Architect is needed to define the high level architecture, design and set up the infrastructure for the implementation of the new CMS and to maintain the technical architecture, connections and systems supporting the new CMS</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +1</p>
	<p>1*Business Analyst is needed to perform the requirements analysis, including proof of concept per technical solution and to support preventive and evaluative maintenance of the new system</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +1</p>
	<p>1*ICT Security Officer is needed to ensure secure design, implementation and operation of the CMS and secure exchange of data with external systems</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +1</p>
	<p>1*Data Protection Specialist is needed to ensure data protection by design and that data protection rules are applied to operational data</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-</i></p>

	<p><i>cumulative):</i> 2024: +1</p> <p>3*ICT Operations Officers are needed for application and IT policy management, for the business transformation of Eurojust processes, to prepare manuals (including delivering training to users) and to administer the Eurojust networks, databases, systems, virtualisation platforms and applications</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +1; 2025: +2</p> <p>2*Administrative staff are needed to prepare job descriptions, carry out selections and manage the on-boarding, training needs and entitlements of new staff and to manage the tender procedures and ensure budget execution, control and reporting on funds received</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +2</p>
<p>Specific objective no2: To render the data exchange between Member States, Eurojust and 3rd countries more efficient and secure.</p>	<p>1*Case Support Assistant is needed to manage the significant increase of data volume expected, to perform operational data processing in the CMS (including translations), to manage overview of the life cycle of open cases and to produce ad hoc and regular reports (monthly, annual) and statistics</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2027: +1;</p> <p>1*Data Management Officers is needed to perform data quality review processes aiming to ensure Eurojust data is high quality, current, complete, unambiguously understood, consistent and available when required</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2027: +1</p> <p>1*Legal Officer and 1*Policy Officer are needed to participate in the negotiation by the Commission of international agreements and to negotiate and draft strategic and/or implementing working arrangements with 3rd countries</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2024: +2;</p> <p>1*Legal Officer is needed to negotiate, draft, evaluate and review of cooperation instruments/cooperation agreements/MoU with partner agencies and bodies</p> <p><i>Estimated FTEs needed – additional FTE to be hired per year (not-cumulative):</i> 2025: +1</p>

### 3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full amounts (or at most to one decimal place)*

		Year 2024	Year 2025	Year 2026	Year 2027
<b>• Establishment plan posts (officials and temporary staff)</b>					
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)		1	1	1	1
20 01 02 03 (Delegations)					
01 01 01 01 (Indirect research)					
10 01 05 01 (Direct research)					
<b>• External staff (in Full Time Equivalent unit: FTE)<sup>60</sup></b>					
20 02 01 (AC, END, INT from the 'global envelope')		1	1	1	1
20 02 03 (AC, AL, END, INT and JPD in the Delegations)					
Budget line(s) (specify) <sup>61</sup>	- at Headquarters <sup>62</sup>				
	- in Delegations				
<b>01 01 01 02</b> (AC, END, INT – Indirect research)					
10 01 05 02 (AC, END, INT – Direct research)					
Other budget lines (specify)					
<b>TOTAL</b>		<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>

<sup>60</sup> AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

<sup>61</sup> Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

<sup>62</sup> Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Represent the Commission in the Executive Board of the Agency. Draw up commission opinion on the annual work programme and monitor its implementation. Monitor implementation of the budget. Assist the Agency in developing its activities in line with EU policies, including by participating in experts meetings.
External staff	One SNE will support the officials and temporary staff in the above tasks and assist the Agency in developing its activities in line with EU policies, including by participating in experts meetings

Description of the calculation of cost for FTE units should be included in the Annex V, section 3.

### 3.2.4. *Compatibility with the current multiannual financial framework*

The proposal/initiative:

- can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts. Please provide an excel table in the case of major reprogramming.

- requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

Explain what is required, specifying the headings and budget lines concerned, the corresponding amounts, and the instruments proposed to be used.

The proposal requires use of the unallocated margin under the heading 2b of the MFF as follow: on BL 07.1007 – Eurojust – in 2024 – EUR 2,158 million, in 2025 EUR 10,811 million, in 2026 – EUR 10,403 million and in 2027 EUR 9,371 million.

### 3.2.5. *Third-party contributions*

The proposal/initiative:

- The proposal/initiative does not provide for co-financing by third parties.
- The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

### 3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
  - on own resources
  - on other revenue
  - please indicate, if the revenue is assigned to expenditure lines

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>63</sup>						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article .....								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

[...]

Specify the method for calculating the impact on revenue.

[...]

<sup>63</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.