



Council of the
European Union

Brussels, 14 December 2023
(OR. en)

16479/23

LIMITE

COPEN 439
EUROJUST 47
JAI 1629
RELEX 1441

Interinstitutional Files:
2023/0400(NLE)
2023/0401(NLE)

NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	15476/23 + ADD 1, 15166/23 + ADD 1, WK 15897/23
Subject:	EU-Armenia agreement for cooperation with Eurojust - Follow-up of the COPEN meeting on 29 November 2023

Introduction

At its meeting on 29 November 2023, the COPEN Working Party examined the draft Agreement between the European Union and Armenia on cooperation between Eurojust and the competent authorities for judicial cooperation in criminal matters of Armenia.

The Working Party also examined the accompanying draft Decision on signature and the draft Decision on conclusion of that Agreement, as set out in 15476/23 + ADD 1 and 15166/23 + ADD 1, taking account of the comments presented by the Council Legal Service in WK 15897/23.

Two Member States made comments on the draft Agreement. Some other Member States made comments on the draft Decisions on signature and on conclusion.

While the Commission showed flexibility to modify the draft Decisions on signature and on conclusion in line with the suggestions presented by the Member States, the Commission stated that it would very much appreciate it to maintain the text of the draft Agreement as it currently stands, given that this text has been agreed with Armenia after lengthy negotiations and that it was fully scrubbed from a lawyer-linguist point of view. Modifying the text at this stage could imply a lengthy and cumbersome process, including reopening negotiations with Armenia.

As regards the latter statement from the Commission, several Member States objected that by submitting a draft Agreement to the COPEN Working Party on which Member States were *de facto* precluded from making comments and suggestions on the text, the Commission would be acting in contradiction with the relevant mandate for negotiations (7072/21), which in Article 3 provides that “the negotiations shall be conducted in consultation with the [COPEN] Working Party” and that “the Commission shall regularly report to the COPEN Working Party on the progress of the negotiations and shall forward all negotiating documents to it without delay”.¹

While the Commission believes that it has complied with the obligation set out in Article 3 of the mandate, it stated that it is willing, with regard to future agreements, to consult the Council via the Working Party at a moment when comments and suggestions on the text could still be taken into account before the text is finalised with the third country concerned. Subsequently to the meeting, the Commission confirmed this understanding in writing and committed that as regards the forthcoming other (12) agreements on cooperation with Eurojust, it shall present the draft agreements for examination to COPEN before formally asking for Council authorisation to initial those agreements.

¹ And see also the negotiation directives, in particular point 7 (7072/21)

Comments in writing and EDPS opinion

At the end of the COPEN meeting of 29 November, given the concerns showed by Member States, the Presidency decided to postpone discussions on the draft Decisions on signature and on conclusion and invited Member States to submit comments in writing on the three documents (draft Agreement, draft Decision on signature and draft Decision on conclusion). The comments received from Member States are set out in WK 16198/23. Two Member States – the same that provided comments on the Agreement orally at the meeting – presented comments on the draft Agreement; three Member States presented comments on the draft Decisions on signature and on conclusion.

Furthermore, the European Data Protection Supervisor (EDPS) delivered its opinion on the two draft Decisions on 11 December 2023 (16697/23). The EDPS basically expressed a positive view on the draft Agreement with Armenia: *“it could be concluded that the presented Agreement between the EU and Armenia adduces adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.”*

Revised draft Council Decisions

In the light of the comments made by Member States, the Presidency has revised the draft Decisions on signature and on conclusion, see Annex I and Annex II.

Changes have been marked by **bold** and underling, and by ~~strike through~~.

The Presidency has taken on board all changes suggested by Member States regarding the said Decisions, except – after consultation with the CLS – the suggestion, relating to Article 3 of the Decision on conclusion, consisting in providing for a certain number of substantive criteria and procedural conditions (such as prior approval by the Council by a qualified majority) of any amendment proposed by the Commission.

In that respect, the Presidency agrees with the Commission that it should be able to modify swiftly at least the Annex identifying the competent national authorities in the third state, and so align it with reality and ensure that data can continue to be transferred. Since any changes will be based on facts rather than on anything which would allow for negotiations, the Presidency agrees with the Commission that the proposed procedure should be sufficient, also in order to limit the burden on all parties involved.

Examination at the COPEN meeting on 20 December 2023

In the light of the foregoing, the Presidency proposes to deal with this issue in the following way at the COPEN meeting on 20 December 2023:

- a) COPEN takes note of the commitment of the Commission to present the other (12) draft agreements on cooperation with Eurojust for examination to COPEN before formally asking for Council authorisation to initial those agreements, so at a moment in time when any comments and suggestions for further improvement can still be duly taken into account;
- b) the draft EU-Armenia Agreement on cooperation with Eurojust will stay as it currently stands, given i) the limited scope of the comments made by the two Member States that have provided input on that Agreement, ii) the fact that most of the comments provided were related to data protection concerns and the EDPS opinion considers the Agreement to be in align with the EU legal framework in the field of data protection, iii) addressing the comments raised by the two Member States could give rise to serious obstacles in concluding the Agreement in the near future, and iv) the commitment by the Commission mentioned under a).²
- c) COPEN is invited to examine and agree with the revised texts of the draft Decisions on signature and on conclusion as set out in the Annex.

² The two Member States that had presented comments on the draft Agreement with Armenia have informally indicated that they are fine with this approach.

Decision on signature - 2023/0401 (NLE)

(draft)

COUNCIL DECISION

on the signing, on behalf of the Union, of an Agreement between the European Union, of the one part, and the Republic of Armenia, of the other part, on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of the Republic of Armenia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), Article 85 in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Articles 47 and 52 of Regulation (EU) 2018/1727 of the European Parliament and of the Council³ provide that Eurojust may establish and maintain cooperation with authorities of third countries based on a cooperation strategy.

³ 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, p. 138, 21.11.2018).

- (2) Article 56 of Regulation (EU) 2018/1727 of the European Parliament and of the Council also provides that Eurojust may transfer personal data to an authority of a third country *inter alia* based on an international agreement concluded between the Union and that third country pursuant to Article 218 TFEU setting out adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.
- (3) On 1 March 2021, the Council authorised the Commission to open negotiations with the Republic of Armenia for an agreement on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities of Armenia for judicial cooperation in criminal matters.
- (4) The negotiations on the Agreement between the European Union, of the one part, and Armenia, of the other part, on cooperation between Eurojust and the competent authorities of Armenia for judicial cooperation in criminal matters ('the Agreement') were successfully finalised in October 2022. The text of the Agreement was initialled on [xx.xx.xxxx].
- (5) The Agreement enables the transfer of personal data between Eurojust and the competent authorities of Armenia, with a view to fighting serious crime and terrorism and protecting the security of the Union and its citizens.
- (6) The Agreement ensures full respect of the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life, recognised in Article 7, the right to the protection of personal data, recognised in Article 8, and the right to an effective remedy and a fair trial recognised by Article 47. In particular, the Agreement includes adequate safeguards for the protection of personal data transferred by Eurojust under the Agreement.
- (7) ~~In Commission Decision (EU) 2019/2006⁴ the participation of Ireland in Regulation (EU) 2018/1727 was confirmed.~~ Ireland is bound by Regulation (EU) 2018/1727 and is therefore taking part in the adoption of this Decision.

⁴ Commission Decision (EU) 2019/2006 of 29 November 2019 on the participation of Ireland in Regulation (EU) 2018/1727 of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) (OJ L 310, 2.12.2019, p. 59).

- (8) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (9) The European Data Protection Supervisor delivered its Opinion **52/2023** on **11 December 2023**.
- (10) Therefore, the Agreement should be signed on behalf of the Union, subject to its conclusion at a later date,

HAS ADOPTED THIS DECISION:

Article 1

The signing of the Agreement between the European Union, of the one part, and the Republic of Armenia, of the other part, on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters ('the Agreement') is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.

The text of the Agreement to be signed is attached to this Decision.

Article 2

~~The Council Secretariat General shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the Commission.~~

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement on behalf of the European Union.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council

The President

Decision on conclusion - 2023/0400 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of an Agreement between the European Union, of the one part, and the Republic of Armenia, of the other part, on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of the Republic of Armenia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), Article 85 in conjunction with Article 218(6), second subparagraph, point (a)(v), and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) Articles 47(1) and 52(1) of Regulation (EU) 2018/1727 of the European Parliament and of the Council⁵ provide that Eurojust may establish and maintain cooperation with authorities of third countries based on a cooperation strategy.

⁵ 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, p. 138, 21.11.2018).

- (2) Article 56(2)(c) of Regulation (EU) 2018/1727 of the European Parliament and of the Council also provides that Eurojust may transfer personal data to an authority of a third country *inter alia* based on an international agreement concluded between the Union and that third country pursuant to Article 218 TFEU setting out adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals.
- (3) In accordance with Council Decision (EU) [XXXX]⁶, the Agreement between the European Union, of the one part, and Armenia, of the other part, on the cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of the Republic of Armenia ('the Agreement') was signed on [XX.XX.XXXX], subject to its conclusion at a later date.
- (4) The Agreement enables the transfer of personal data between Eurojust and the competent authorities of Armenia, with a view to fighting serious crime and terrorism and protecting the security of the Union and its citizens.
- (5) The Agreement ensures full respect of the fundamental rights of the Union, in particular the right to respect for private and family life, recognised in Article 7, the right to the protection of personal data, recognised in Article 8, and the right to an effective remedy and a fair trial, recognised by Article 47 of the Charter of Fundamental Rights of the European Union⁷. In particular, the Agreement includes adequate safeguards for the protection of personal data transferred by Eurojust under the Agreement.

⁶ Council Decision (EU) [XXXXX] of XX.XX.XXXX on the signing, on behalf of the Union, of the Agreement between the European Union, of the one part, and Armenia, of the other part, on the cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters of the Republic of Armenia (XXXX).

⁷ OJ C 326, 26.10.2012, p. 391.

- (6) Pursuant to Article 218(7) TFEU, it is appropriate for the Council to authorise the Commission to approve on the Union's behalf the modifications of Annexes I, II and III, to the Agreement and to authorise the Commission to agree modalities for the continued use and storage of the information that has already been communicated between the Parties pursuant to the Agreement and to authorise the Commission to update the information about the addressee of notifications.
- (7) ~~In Commission Decision (EU) 2019/2006⁸ the participation of Ireland in Regulation (EU) 2018/1727 was confirmed.~~ Ireland is bound by Regulation (EU) 2018/1727 and is therefore taking part in the adoption of this Decision.
- (8) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (9) The European Data Protection Supervisor delivered its Opinion **52/2023** on **11 December 2023**.
- (10) The Agreement should be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

⁸ Commission Decision (EU) 2019/2006 of 29 November 2019 on the participation of Ireland in Regulation (EU) 2018/1727 of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) (OJ L 310, 2.12.2019, p. 59).

Article 1

The Agreement between the European Union, of the one part, and the Republic of Armenia, of the other part, on cooperation between the European Union Agency for Criminal Justice Cooperation (Eurojust) and the competent authorities for judicial cooperation in criminal matters ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

Article 2

~~The Commission shall proceed, on behalf of the Union, to make the notification provided for in Article 34 of the Agreement⁹, in order to express the consent of the Union to be bound by the Agreement.~~

The President of the Council is hereby authorised to designate the person(s) empowered, on behalf of the European Union, to give notifications provided for in Article 29 of the Agreement.

Article 3

1. For the purposes of Article 30(2) of the Agreement, the position to be taken on behalf of the Union on the modifications of Annexes I, II and III to the Agreement shall be approved by the Commission after consultation with the Council.
2. For the purpose of Article 33(3) of the Agreement, the Commission shall be authorised, **after consultation with the Council,** to agree modalities for the continued use and storage of the information that has already been communicated between the Parties pursuant to the Agreement.

⁹ The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.

3. For the purpose of Article 34(2) of the Agreement, the Commission shall be authorised to update the information about the addressee of notifications after consultation with the Council.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council

The President
