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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	14458/21
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 - Written comments / suggestions from Member States

Please find attached additional comments from Sweden on Article 21a.

Preliminary proposals from Sweden on Article 21 a¹

We support the Commission's proposal to include the provisions of the Council decision from 2005 in the Eurojust regulation. This is needed in order to clarify the obligations for Member States and to streamline which information Member States should transmit to Eurojust.

In order to better reflect Eurojust's mandate in supporting and strengthening coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or where prosecution is required on common bases, we are proposing some amendments to Article 21 a.1 and 21 a.2. We are also proposing an additional amendment to paragraph 1 to better reflect the differences in Member States procedural law regarding the timing of when a judicial authority is first involved in a terrorism case. We see a need for such amendments in order to achieve the aim of streamlining the type of information Members States should transmit to Eurojust. We are also proposing to take EDPS opinion on Article 21 a.4 into consideration. Finally, we're proposing some changes in Article 21 a.5 in order to even better reflect the sensitive nature of many terrorism cases and the need to in certain cases, at least at an early stage, withhold information including when it cannot be excluded that sharing could disrupt relation with other countries, including third countries.

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 **necessary for the performance of Eurojust's tasks under Articles 2 and 4** as soon as judicial authorities are involved, [Alt. 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, **or at the latest when a suspect is detained or prosecuted.**]*

¹ Sweden still has a general scrutiny and parliamentary reservation on the proposal.

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, **unless the competent national authority deems that the conditions described in paragraph 5 applies.**

~~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 when **the competent national authority deems that it cannot be excluded that** 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 **or could disrupt the relation to other countries.**

In order to reflect the proposed changes to Article 21 a, we would propose a change to recital 13. Further analyses of other recitals are needed.

Recital 13

As information about existing cross-links to other judicial proceedings ~~is most~~ **could be** 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 **or at the latest when a suspect is detained or prosecuted.** If the competent national authorities are already aware of cross-links, they should inform Eurojust accordingly.