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#### NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a collaboration platform to support the functioning of Joint Investigation Teams and amending Regulation (EU) 2018/1726 - New revised version

In view of the COPEN meeting on 2 May 2022, delegations will find attached a new revised version of the above proposal, submitted by the Presidency.

Delegations' attention is drawn to the fact that:

- changes with respect to the original Commission proposal (14684/21) are highlighted with **bold**, underline and ~~strikethrough~~.
- to facilitate the discussions, the latest changes introduced by the Presidency with respect to document 8033/22, which was considered at the COPEN meeting on 13 April 2022, are highlighted with ***italic bold underline*** and ~~italics strikethrough~~.

Proposal for a

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

**establishing a collaboration platform to support the functioning of Joint Investigation Teams  
and amending Regulation (EU) 2018/1726**

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 82(1), point (d), 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,

Whereas:

- (1) The Union has set itself the objective of offering its citizens a common area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured. At the same time, the Union has to ensure that that common area remains a safe place. That objective can only be achieved by means of appropriate measures to prevent and combat crime, including organised crime and terrorism.

- (2) That is especially challenging where crime takes a cross-border dimension on the territory of several Member States and/or third countries. In such situations, Member States need to be able to join their forces and operations to allow for effective and efficient cross-border investigations and prosecutions for which the exchange of information and evidence is crucial. One of the most successful tools for such cross-border cooperation are Joint Investigation Teams ('JITs') that allow for direct cooperation and communication between the judicial and law enforcement authorities of several Member States and possibly third countries to organise their actions and investigations in the most efficient way. JITs are set up for a specific purpose and a limited time-period by the competent authorities of two or more Member States and possibly third countries, to carry out jointly criminal investigations with a cross-border impact.
- (3) The Union *acquis* provides for two legal frameworks to set up JITs with the participation of at least two Member States: Council Framework Decision 2002/465/JHA<sup>1</sup> and Article 13 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>2</sup>. Third countries can be involved in JITs as parties where there is a legal basis for such involvement, such as Article 20 of the Second Additional Protocol of the 1959 Council of Europe Convention<sup>3</sup> and Article 5 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America<sup>4</sup>.

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<sup>1</sup> Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams (OJ L 162, 20.6.2002, p. 1).

<sup>2</sup> OJ C 197, 12.7.2000, p. 3.

<sup>3</sup> CET No 182.

<sup>4</sup> OJ L 181, 19.7.2003, p. 34.

- (4) The existing legal frameworks at Union level do not set out how the entities participating in JITs exchange information and communicate. Those entities reach an agreement on such exchange and communication on the basis of the needs and available means. However, there is a lack of dedicated secure and effective channel to which all participants could have recourse and through which they could promptly exchange large volumes of information and evidence or allow for secure and effective communication. Furthermore, there is no system that would support daily management of JITs, including the traceability of evidence exchanged among the participants.
- (5) In light of the increasing possibilities of crime infiltrating Information Technology (IT) systems, the current state of play could hamper the effectiveness and efficiency of cross-border investigations, as well as jeopardise and slow down such investigations and prosecutions, making them more costly. The judiciary and law enforcement in particular need to ensure that their systems are as safe as possible and that all JIT members can connect and interact easily, independently of their national systems.
- (6) The speed and efficiency of the exchanges between the entities participating in JITs could be considerably enhanced by creating a dedicated IT platform to support their functioning. Therefore it is necessary to lay down rules establishing a centralised IT platform ('JITs collaboration platform') at Union level to help JITs collaborate, securely communicate and share information and evidence.
- (7) The JITs collaboration platform should only be used where one of the Union legal bases is, among others, a legal basis for the JIT. For all JITs based solely on international legal bases, the platform, financed by the Union budget and developed on basis of Union legislation, should not be used. However, where a third country is part of a JIT agreement that lists one of the Union legal bases besides an international one, its competent authorities should be considered JIT members.

- (8) The use of the JITs collaboration platform should be on a voluntary basis. However, in view of its added value for cross-border investigations its use is strongly encouraged. The use or non-use of the JITs collaboration platform should not prejudice or affect the legality of other forms of communication or exchange of information and should not change the way the JITs are set up, organised or function. The establishment of the JITs collaboration platform should not impact the underlying legal bases for JITs nor the applicable national procedural legislation regarding the collection and use of the obtained evidence. The platform should only provide a secure IT tool to improve the cooperation and the effectiveness of the JITs.
- (9) The JITs collaboration platform should cover the operational and post-operational phases of a JIT, ~~starting~~ from the moment the relevant JIT agreement is signed by its members, ~~and finishing once~~ **until the JIT evaluation has been completed** ~~is over~~. Due to the fact that the actors participating in the JIT set-up process are different from the actors who are members of JIT once it is established, the process of setting up a JIT, especially the negotiation of the content and the signature of the JIT agreement, should not be managed by the JITs collaboration platform. However, following a need for an electronic tool to support the process of signing up a JIT, the Commission should consider covering that process by the e-Evidence Digital Exchange System (eEDES).
- (10) For each JIT making use of the JITs collaboration platform, the JIT members should be encouraged to conduct an evaluation of the JIT, either during the operational phase of the JIT or following its closure, using the tools provided for by the JITs collaboration platform.
- (11) The JIT agreement, ***which may also include appendices***, should be a prerequisite for the use of the JITs collaboration platform. The content of all future JIT agreements should be adapted to take into account the relevant provisions of this Regulation.

**(11a) The JITs Network developed a model agreement including appendices, to facilitate the setting up of JITs. <sup>5</sup> The content of the model agreement and those appendices should be adapted to take into account the decision to use the JITs collaboration platform and the rules for access to the platform.**

- (12) From an operational perspective, the JITs collaboration platform should be composed of isolated JIT collaboration spaces created for each individual JIT hosted by the platform.
- (13) From a technical perspective, the JITs collaboration platform should be accessible via a secure connection over the internet and should be composed of a centralised information system, accessible through a web portal, communication software for mobile and desktop devices, and a connection between the centralised information system and relevant IT tools, supporting the functioning of JITs and managed by the JITs Network Secretariat.
- (14) The purpose of the JITs collaboration platform should be to facilitate the daily coordination and management of a JIT, ensure the exchange and temporary storage of operational information and evidence, provide secure communication, provide for evidence traceability and support the process of the evaluation of a JIT. All entities participating in JITs should be encouraged to use all functionalities of the JITs collaboration platform and to replace as much as possible the communication and data exchange channels which are currently used.
- (15) The JITs collaboration platform complements existing tools allowing for secure exchange of data among judicial authorities and law enforcement, such as the Secure Information Exchange Network Application (SIENA).
- (16) Communication-related functionalities of the JITs collaboration platform should be provided by a software allowing for non-traceable communication stored locally at the devices of the users.

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<sup>5</sup> ***OJ C 44, 28.1.2022, p.3***

- (17) A proper functionality allowing to exchange operational information and evidence, including large files, should be ensured through an upload/download mechanism designed to store the data centrally only for the limited period of time necessary for the technical transfer of the data. As soon as the data is downloaded by all addresses, it should be automatically deleted from the JITs collaboration platform.
- (18) Given its experience with managing large-scale systems in the area of justice and home affairs, the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) established by Regulation (EU) 2018/1726 of the European Parliament and of the Council<sup>6</sup> should be entrusted with the task of designing, developing and operating the JITs collaboration platform making use of the existing functionalities of SIENA and other functionalities at Europol to ensure complementarity, **and if appropriate**, interoperability. Therefore, its mandate should be amended to reflect those new tasks and it should be provided with the appropriate funding and staffing to meet its responsibilities under this Regulation. In that regard, rules should be established on the responsibilities of eu-LISA, as the Agency entrusted with the development, technical operation and maintenance of the JITs collaboration platform.
- (19) When designing the JITs collaboration platform, eu-LISA should ensure **that data held by law enforcement authorities could, if necessary, be easily transmitted from SIENA to the JITs collaboration platform**, technical interoperability with SIENA.

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<sup>6</sup> Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011 (OJ L 295, 21.11.2018, p. 99).

- (20) Since the establishment of the Network of National Experts on Joint Investigation Teams (the ‘JITs Network’) in accordance with Council Document 11037/05<sup>7</sup>, the JITs Network Secretariat supports the work of the JITs Network by organising annual meetings, trainings, collecting and analysing the JIT evaluation reports and managing the Eurojust’s JIT funding programme. Since 2011, the JITs Network Secretariat is hosted by Eurojust as a separate unit. To allow the JITs Network Secretariat to support users in the practical application of the JITs collaboration platform, as well as to provide technical and administrative support to JIT space administrators, Eurojust should be provided with appropriate staff allocated to the JITs Network Secretariat.
- (21) Given the currently existing IT tools supporting operations of JITs, which are hosted at Eurojust and managed by the JITs Network Secretariat, it is necessary to connect the JITs collaboration platform with those IT tools, in order to facilitate the management of JITs. To that end, Eurojust should ensure the necessary technical adaptation of its systems in order to establish such connection. Eurojust should be provided with the appropriate funding and staffing to meet its responsibilities in that regard.
- (22) In order to ensure a clear allocation of rights and tasks, rules should be established on the responsibilities of Member States, Eurojust, Europol, the European Public Prosecutor’s Office, the European Anti-Fraud Office (OLAF) and other competent Union bodies, offices and agencies, including the conditions, under which they may use the JITs collaboration platform for operative purposes.

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<sup>7</sup> Council of the European Union, Outcome of Proceedings of Article Art 36 Committee on 7 and 8 July 2005, Item 7 of the Agenda: Joint Investigation Teams - Proposal for designation of national experts, 11037/05.



- (23) This Regulation sets out the details about the mandate, composition and organisational aspects of a Programme Management Board which should be set up by the Management Board of eu- LISA. The Programme Management Board should ensure the adequate management of the design and development phase of the JITs collaboration platform. It is also necessary to set out the details of the mandate, composition and organisation aspects of an Advisory Group to be established by eu-LISA in order to obtain expertise related to the JITs collaboration platform, in particular in the context of preparation of its annual work programme and its annual activity report.
- (24) This Regulation establishes rules on access to the JITs collaboration platform and the necessary safeguards. The JIT space administrator or administrators should be entrusted with the management of the access rights to the individual JIT collaboration spaces. They should be in charge of **managing** ~~granting~~ access, during the operational and post-operational phases of the JIT, to JITs collaboration platform users, **on the basis of the JIT agreement**. JIT space administrators should be able to transfer *their technical and administrative tasks* ~~role~~ to the JITs *Network Secretariat*, *except for the verification of the data uploaded by third countries*.
- (25) Bearing in mind the sensitivity of the operational data exchanged among the JITs collaboration platform users, the JITs collaboration platform should guarantee a high level of security. eu-LISA should take all necessary technical and organisational measures in order to ensure the security of the exchange of data by using strong end-to-end encryption algorithms to encrypt data in transit or at rest.

- (26) This Regulation establishes rules on the liability of Member States, eu-LISA, Eurojust, Europol, the European Public Prosecutor's Office, OLAF and other competent Union bodies, offices and agencies, in respect of material or non-material damage occurring as a result of any act incompatible with this Regulation. Concerning third countries, liability clauses in respect of material or non-material damage should be contained in respective JIT agreements.
- (27) In addition, this Regulation provides specific data protection provisions, concerning both operational data and non-operational data, needed to supplement the existing data protection arrangements and to provide for an adequate overall level of data protection, data security and protection of the fundamental rights of the persons concerned.
- (28) Directive (EU) 2016/680 of the European Parliament and of the Council<sup>8</sup> applies to the processing of personal data by competent national authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. As regards the processing by Union institutions, bodies, offices and agencies, Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>9</sup> should apply in the context of this Regulation.

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<sup>8</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>9</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

**(28a) Each competent national authority of a Member State, and where appropriate, Eurojust, Europol, the European Public Prosecutor's Office, OLAF or any other competent Union body, office or agency should be separately responsible for processing of the operational personal data each one of them uploads to the JITs collaboration platform, as well as for the processing of operational personal data each of them downloads from the JITs collaboration platform.**

(29) Where appropriate, **In accordance with the JIT agreement**, it should be possible for JIT space administrators to grant access to a JIT collaboration space to third countries which are parties to a JIT agreement. Any transfer of personal data to third countries or international organisations in the context of a JIT agreement is subject to compliance with the provisions set out in Chapter V of Directive (EU) 2016/680. Exchanges of operational data with third countries should be limited to those required to fulfil the purposes of the JIT agreement.

~~(30) Whenever a third country uploads operational **data** information or evidence to a JIT collaboration space, the JIT space administrator **the other JIT members**, should verify that such information or evidence data is provided to fulfil the purposes of the JIT agreement, before it can be downloaded by other users of the platform.~~

**~~(30a) Operational and non-operational data should be stored for no longer than is necessary for the purposes for which they are processed. Therefore, operational data should be erased as soon as the process of downloading is completed by all users, at the latest upon expiry of the retention period. Non-operational data should be erased upon expiry of the retention period or, if it is decided before that not to conduct evaluation at the closure of the decision, at that point in time.~~**

(31) Where a JIT has multiple JIT space administrators, those JIT space administrators should agree among themselves, as soon as the JIT collaboration space including third countries is established, about one of them to be controller of the data uploaded by those third countries.

- (32) eu-LISA should ensure that accessing the centralised information system and all data processing operations in the centralised information system are logged for the purposes of monitoring data integrity and security, the lawfulness of the data processing as well as for the purposes of self-monitoring.
- (33) This Regulation imposes reporting obligations on eu-LISA regarding the development and functioning of the JITs collaboration platform in light of objectives relating to the planning, technical output, cost-effectiveness, security and quality of service. Furthermore, the Commission should conduct an overall evaluation of the JITs collaboration platform four years after the start of operations of the JITs collaboration platform and every four years thereafter.
- (34) Each Member State as well as Eurojust, Europol, the European Public Prosecutor's Office, OLAF and any other competent Union body, office and agency should bear its own costs arising from their use of the JITs collaboration platform.
- (35) In order to establish conditions for the technical development and implementation of the JITs collaboration platform, 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 the Council<sup>10</sup>.
- (36) The Commission should determine the date of the start of operations of the JITs collaboration platform once the relevant implementing acts necessary for the technical development of the JITs collaboration platform have been adopted and eu-LISA has carried out a comprehensive test of the JITs collaboration platform, in cooperation with the Member States.

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<sup>10</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 Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (37) Since the objective of this Regulation, namely to enable the effective and efficient cooperation, communication and exchange of information and evidence among JIT members, Eurojust, Europol, OLAF and other competent Union bodies, offices and agencies, cannot be sufficiently achieved by the Member States, but can rather, by setting out common rules, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
- (38) 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 Regulation and is not bound by it or subject to its application.
- (39) In accordance with Article 3 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 7 April 2022, its wish to take part in the adoption and application of this Regulation.**
- (40) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) No 2018/1725 and delivered an opinion on **25 January 2022**,

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### ***General provisions***

#### ***Article 1***

#### **Subject matter**

This Regulation:

- (a) establishes an IT platform (the 'JITs collaboration platform'), to be used on a voluntary basis, to facilitate the cooperation of competent authorities participating in Joint Investigation Teams ('JITs') set up on the basis of Article 13 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union or on Framework Decision 2002/465/JHA;
- (b) lays down rules on the division of responsibilities between the JITs collaboration platform users and the agency responsible for the development and maintenance of the JITs collaboration platform;
- (c) sets out conditions, under which the JITs collaboration platform users may be granted access to the JITs collaboration platform;
- (d) lays down specific data protection provisions needed to supplement the existing data protection arrangements and to provide for an adequate overall level of data protection, data security and protection of the fundamental rights of the persons concerned.

## Article 2

### Scope

1. This Regulation applies to the processing of information, including personal data, within the context of a JIT. That includes the exchange and storage of operational ~~data information and evidence~~ as well as non-operational ~~data information~~. This Regulation applies to the operational and post-operational phases of a JIT, starting from the moment the relevant JIT agreement is signed by its members **until the JIT evaluation has been completed.**
2. This Regulation does not amend or otherwise affect the existing legal provisions on the establishment, conduct or evaluation of JITs.

## Article 3

### Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘centralised information system’ means a central IT system where storing and processing of JITs related data takes place;
- (2) ‘communication software’ means software that facilitates remote access to systems and the exchange of files and messages in text, audio or video formats between JITs collaboration platform users;
- (3) ‘competent authorities’ means the **Member States**’ authorities competent **to be part of a JIT that was** set up ~~a JIT as referred to~~ **in accordance with** Article 1 of Framework Decision 2002/465/JHA and Article 13 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union, the European Public Prosecutor’s Office when acting pursuant to its competences as provided for by Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, as well as the competent authorities of a third country where they are party of a JIT agreement on the basis of an additional legal basis;

- (4) 'JIT members' means representatives of the competent authorities referred to in point 3 of this Article;
- (5) 'JITs collaboration platform users' means JIT members, Eurojust, Europol, OLAF and other competent Union bodies, offices and agencies;
- (6) 'JIT collaboration space' means an individual isolated space for each JIT hosted on the JITs collaboration platform;
- (7) 'JIT space administrator' means ~~a representative of the competent authorities of the Member State's JIT member,~~ **or a European Public Prosecutor's Office's JIT member,** **designated in the JIT agreement**, in charge of the JIT collaboration space;
- (8) 'operational data' means information and evidence processed by the JITs collaboration platform during the operational phase of a JIT to support cross-border investigations and prosecutions;
- (9) 'non-operational data' means administrative data processed by the JITs collaboration platform, notably to facilitate the management of the JIT and daily cooperation between JITs collaboration platform users.

#### *Article 4*

##### **Technical architecture of the JITs collaboration platform**

The JITs collaboration platform shall be composed of the following:

- (a) a centralised information system, which allows for temporary central data storage;
- (b) a communication software, which allows for **secure local** storage of communication data **on devices of the JITs collaboration platform users**;
- (c) a connection between the centralised information system and relevant IT tools, supporting the functioning of JITs and managed by the JITs **Network** Secretariat.



**Purpose of the JITs collaboration platform**

1. The purpose of the JITs collaboration platform shall be to facilitate:
  - (a) the daily coordination and management of a JIT, through a set of functionalities supporting the administrative and financial processes within the JIT;
  - (b) the exchange and temporary storage of operational **data** ~~information and evidence~~, including large files, through an upload and download functionality;
  - (c) secure communications through a functionality covering instant messaging, chats, audio and video-conferencing;
  - (d) **traceability of exchanges of traceability** evidence through a business logging mechanism allowing to keep track of all evidence exchanged through the JITs collaboration platform;
  - (e) the evaluation of a JIT through a dedicated collaborative evaluation process.
2. The centralised information system shall be hosted by eu-LISA at its technical sites.

## CHAPTER II

### *Development and operational management*

#### *Article 6*

##### **Adoption of implementing acts by the Commission**

The Commission shall adopt the implementing acts necessary for the technical development of the JITs collaboration platform as soon as possible, and in particular acts concerning:

- a) the list of functionalities required for the daily coordination and management of a JIT;
- b) the list of functionalities required for secure communications;
- c) business specifications of the connection referred to in Article 4, point (c);
- d) security in accordance with Article 15;
- e) technical logs in accordance with Article 21;
- f) technical statistics in accordance with Article 22;
- g) performance and availability requirements of the JITs collaboration platform.

The implementing acts referred to in the first subparagraph of this Article shall be adopted in accordance with the examination procedure referred to in Article 25 **(2)**.

#### *Article 7*

##### **Responsibilities of eu-LISA**

1. The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice ('eu-LISA') shall establish the design of the physical architecture of the JITs collaboration platform including its technical specifications and evolution **on the basis of the decisions taken in accordance with Article 6**. That design shall be approved by its Management Board, subject to a favourable opinion of the Commission.

2. eu-LISA shall be responsible for the development of the JITs collaboration platform in accordance with the principle of data protection by design and by default. The development shall consist of the elaboration and implementation of the technical specifications, testing and overall project coordination.
3. eu-LISA shall make the communication software available to the JITs collaboration platform users.
4. eu-LISA shall develop and implement the JITs collaboration platform as soon as possible after the entry into force of this Regulation and following the adoption by the Commission of the implementing acts pursuant to Article 6.
5. eu-LISA shall ensure that the JITs collaboration platform is operated in accordance with this Regulation, with the implementing act referred to in Article 6, as well as in accordance with Regulation (EU) 2018/1725.
6. eu-LISA shall be responsible for the operational management of the JITs collaboration platform. The operational management of the JITs collaboration platform shall consist of all the tasks necessary to keep the JITs collaboration platform operational in accordance with this Regulation, and in particular the maintenance work and technical developments necessary to ensure that the JITs collaboration platform functions at a satisfactory level in accordance with the technical specifications.
7. eu-LISA shall ensure the provision of training on the practical use of the JITs collaboration platform.
8. eu-LISA shall not have access to the JIT collaboration spaces.

9. Without prejudice to Article 17 of the Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>11</sup>, eu-LISA shall apply appropriate rules of professional secrecy or other equivalent duties of confidentiality to its entire staff required to work with data registered in the centralised information system. That obligation shall also apply after such staff leave office or employment or after the termination of their activities.

#### *Article 8*

### **Responsibilities of the Member States**

Each Member State shall make the technical arrangements necessary for access of its competent authorities to the JITs collaboration platform in accordance with this Regulation.

#### *Article 9*

### **Responsibilities of competent Union bodies, offices and agencies**

1. Eurojust, Europol, the European Public Prosecutor's Office, OLAF and other competent Union bodies, offices and agencies shall make the necessary technical arrangements to enable them to access the JITs collaboration platform.
2. Eurojust shall be responsible for the necessary technical adaptation of its systems, required to establish the connection referred to in Article 4, point (c).

#### *Article 10*

### **Programme Management Board**

1. Prior to the design and development phase of the JITs collaboration platform, the Management Board of eu-LISA shall establish a Programme Management Board.

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<sup>11</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, (OJ L 56, 4.3.1968, p. 1).

2. The Programme Management Board shall be composed of ten members as follows:
- a) eight members appointed by the Management Board;
  - b) the Chair of the Advisory Group referred to in Article 11;
  - c) one member appointed by the Commission.
3. The Management Board of eu-LISA shall ensure that the members it appoints to the Programme Management Board have the necessary experience and expertise in the development and management of IT systems supporting judicial authorities.
4. eu-LISA shall participate in the work of the Programme Management Board. To that end, representatives of eu-LISA shall attend the meetings of the Programme Management Board in order to report on work regarding the design and development of the JITs collaboration platform and on any other related work and activities.
5. The Programme Management Board shall meet at least once every three months, and more often as necessary. It shall ensure the adequate management of the design and development phase of the JITs collaboration platform. The Programme Management Board shall submit written reports regularly to the Management Board of eu-LISA, and where possible every month, on the progress of the project. The Programme Management Board shall have no decision-making power nor any mandate to represent the members of the eu-LISA Management Board.
6. The Programme Management Board shall establish its rules of procedure which shall include in particular rules on chairmanship, meeting venues, preparation of meetings, admission of experts to the meetings, communication plans ensuring that non-participating Members of the eu-LISA Management Board are kept fully informed.

7. The chairmanship of the Programme Management Board shall be held by a Member State.
8. The Programme Management Board's secretariat shall be ensured by eu-LISA.

### *Article 11*

#### **Advisory Group**

1. eu-LISA shall establish an Advisory Group in order to obtain expertise related to the JITs collaboration platform, in particular in the context of preparation of its annual work programme and its annual activity report.
2. During the design and development phase of the JITs collaboration platform, the Advisory Group shall be composed of the representatives of the Member States, the Commission and the JITs *Network* Secretariat. It shall be chaired by eu-LISA. It shall:
  - a) meet regularly, where possible at least once a month, until the start of operations of the JITs collaboration platform;
  - b) report after each meeting to the Programme Management Board;
  - c) provide the technical expertise to support the tasks of the Programme Management Board.

## CHAPTER III

### *Setting up of the JIT collaboration spaces and access to the JITs collaboration platform*

#### Article 12a

##### Setting up of the JIT collaboration spaces

1. **Where a JIT agreement provides for the use of the JITs collaboration platform in accordance with this Regulation**, a JIT collaboration space shall be created within the JITs collaboration platform for each JIT.
2. **The agreement, shall determine the rules for access to competent authorities to the relevant JIT collaboration space and may provide for competent Union bodies, offices and agencies, and, where appropriate, third countries which have signed the agreement, to be granted access to the relevant JIT collaboration space. The JIT agreement ~~must~~ shall provide for the rules for such ~~##~~ access, in accordance with this Regulation.**
3. The JIT collaboration space shall be opened by the JIT space administrator or administrators, with the technical support of eu-LISA.
4. **When the JIT members decided not to use the JIT collaboration platform when they signed the JIT agreement but decide to start using the JITs collaboration platform over the course of the JIT, the JIT agreement when it did not already provide for this possibility, has to be amended and paragraph 1 to 3 of this Article are applied. In case the JIT members decide to stop using the platform over the course of the JIT, the JIT agreement shall be amended if this possibility was not already included in the agreement.**

## Article 12 b

### Designation and role of the JIT space administrator

1. If the use of the JITs collaboration platform is decided in the JIT agreement, one or several space administrator(s) ~~have to~~ *shall* be designated in the JIT agreement, among the Member States' JIT members or European Public Prosecutor's Office's JIT member.
2. The JIT space administrator or administrators shall ~~establish~~ manage the access rights of the JITs collaboration platform users to the JIT collaboration space, in accordance with the JIT agreement.
3. ~~If Eurojust participates to the JIT, it~~ The JIT agreement, may provide for the JITs Network Secretariat ~~access to~~ access a JIT collaboration space for the purpose of technical and administrative support, including access rights management. ~~If such decision is taken~~ When the JIT agreement provides for such possibility, and such decision is taken by the JIT members, the JIT space administrator shall grant the JITs Network Secretariat access to the JIT collaboration space ~~to the JIT Secretariat for this purpose.~~

## Article 12 c

Access to the JIT collaboration spaces by Member States' competent authorities ~~and the European Public Prosecutor's Office when acting pursuant to its competences as provided for by Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939~~

In accordance with the underlying JIT agreement, the JIT space administrator or administrators shall grant access to a JIT collaboration space to the competent authorities designated in the JIT agreement.

1. ~~Following the signature of a JIT agreement, a JIT collaboration space shall be created within the JITs collaboration platform for each JIT.~~



~~2. The JIT collaboration space shall be opened by the JIT space administrator or administrators, with the technical support of eu-LISA.~~

~~3. The JIT space administrator or administrators shall establish the access rights of the JITs collaboration platform users to the JIT collaboration space, on the basis of the JIT agreement.~~

### *Article 13*

#### **Access to the JIT collaboration spaces by competent Union bodies, offices and agencies**

**In accordance with the underlying JIT agreement, the JIT space administrator or administrators shall grant access, to the extent necessary, to a JIT collaboration space to:**

- ~~1. The JIT space administrator or administrators, may decide to grant Eurojust, including the JIT Secretariat, access to a JIT collaboration space for the purpose of fulfilling its tasks set out in Regulation (EU) 2018/1727 of the European Parliament and of the Council<sup>12</sup>. In particular, the JIT space administrator or administrators may decide to grant and to the JIT Secretariat access to a JIT collaboration space for the purpose of technical and administrative support, including access rights management.~~
- ~~2. The JIT space administrator or administrators, may decide to grant Europol access to a JIT collaboration space for the purpose of fulfilling its tasks set out in Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>13</sup>.~~

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<sup>12</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) (OJ L 295, 21.11.2018, p. 138).

<sup>13</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) (OJ L 135, 24.5.2016, p. 53)

3. ~~The JIT space administrator or administrators, may decide to grant OLAF access to a JIT collaboration space for the purpose of fulfilling its tasks set out in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>14</sup>.~~
4. ~~The JIT space administrator or administrators may decide to grant the European Public Prosecutor's Office access to a JIT collaboration space for the purpose of fulfilling its tasks set out in Council Regulation (EU) 2017/1939. JIT space administrator or administrators may decide to grant other competent Union bodies, offices and agencies access to a JIT collaboration space for the purpose of fulfilling tasks set out in their basic acts.~~

#### *Article 14*

##### **Access to the JIT collaboration spaces by third countries' competent authorities**

1. ~~For the purposes listed in Article 5, the JIT space administrator or administrators may decide to grant~~ **In accordance with the underlying JIT agreement, and for the purposes listed in Article 5, the JIT space administrator or administrators shall grant access to a JIT collaboration space to** ~~access to a JIT collaboration space to the competent authorities of third countries which have signed a particular~~ **the relevant JIT agreement.**
2. ~~*The JIT space administrator or administrators the exchanges of operational data with the competent authorities of third countries that have been granted access to a JIT collaboration space are shall be limited to what is required for the purposes of the JIT agreement and subject to the conditions laid therein. For this purpose, each Member States' JIT members and, when it participates, the European Public Prosecutor's Office, shall verify the respect of these conditions.*~~

<sup>14</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).

2. Whenever Member States' JIT members and, when it participates, the European Public Prosecutor's Office JIT member upload operational data to a JIT collaboration space for the download by a third country, the relevant Member States' JIT member or the European Public Prosecutor's Office JIT member shall verify that the data they have respectively uploaded is limited to what is required for the purposes of the JIT agreement and subject to the conditions laid therein.
3. Whenever a third country uploads operational data ~~information or evidence~~ to a JIT collaboration space, the JIT space administrator or administrators shall verify that such ~~information or evidence~~ data is limited to what is required for the purposes of the JIT agreement and subject to the conditions laid therein, before it can be downloaded by other users of the platform.
4. ~~Member States~~ **Member States' competent authorities** shall ensure that their transfers of personal data to third countries that have been granted access to a JIT collaboration space only take place where the conditions laid down in Chapter V of Directive 2016/680 are met.
5. **The European Public Prosecutor's Office when acting pursuant to its competences as provided for by Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, shall ensure that its transfers of personal data to third countries that have been granted access to a JIT collaboration space only take place where the conditions laid down in ~~Chapter V of Directive 2016/680 and~~ Articles 80-84 of Regulation (EU) 2017/1939 are met.**

## CHAPTER IV

### *Security and liability*

#### *Article 15*

##### **Security**

1. eu-LISA shall take the necessary technical and organisational measures to ensure a high level of cyber security of the JITs collaboration platform and the information security of data within the JITs collaboration platform, in particular in order to ensure the confidentiality and integrity of operational and non-operational data stored in the centralised information system.
2. eu-LISA shall prevent unauthorised access to the JITs collaboration platform and shall ensure that persons authorised to access the JITs collaboration platform have access only to the data covered by their access authorisation.
3. For the purposes of paragraphs 1 and 2, eu-LISA shall adopt a security plan, a business continuity and disaster recovery plan, to ensure that the centralised information system may, in case of interruption, be restored.
4. eu-LISA shall monitor the effectiveness of the security measures referred to in this Article and shall take the necessary organisational measures related to self-monitoring and supervision to ensure compliance with this Regulation.

#### *Article 16*

##### **Liability**

1. Where a Member State, Eurojust, Europol, the European Public Prosecutor's Office, OLAF or any other competent Union body, office or agency, as a consequence of a failure on their part to comply with their obligations under this Regulation, cause damage to the JITs collaboration platform, that Member State, Eurojust, Europol, the European Public Prosecutor's Office, OLAF or other competent Union body, office or agency respectively, shall be held liable for such damage, **unless and** insofar as eu-LISA fails to take reasonable measures to prevent the damage from occurring or to minimise its impact.

2. Claims for compensation against a Member State for the damage referred to in paragraph 1 shall be governed by the law of the defendant Member State. Claims for compensation against Eurojust, Europol, the European Public Prosecutor's Office, OLAF or any other competent Union body, office or agency for the damage referred to in paragraph 1 shall be governed by their respective founding acts.

## **CHAPTER V**

### ***Data protection***

#### *Article 17*

#### **Retention period for storage of operational data**

1. Operational data pertaining to each JIT collaboration space shall be stored in the centralised information system for as long as needed for all concerned JITs collaboration platform users to complete the process of its downloading. The retention period shall not exceed four weeks.
2. **As soon as the process of downloading is completed by all users or, at the latest,** upon expiry of the retention period referred to in paragraph 1, the data **element record** shall be automatically erased from the centralised system.

#### *Article 18*

#### **Retention period for storage of non-operational data**

1. Where an evaluation of the JIT is envisaged, non-operational data pertaining to each JIT collaboration space shall be stored in the centralised information system until the JIT evaluation has been completed. The retention period shall not exceed five years.
2. **If it is decided not to conduct evaluation at the closure of the JIT or, at the latest,** upon expiry of the retention period referred to in paragraph 1 the data **element record** shall be automatically erased from the centralised system.

## Article 19

### Data controller and data processor

1. Each competent national authority of a Member State, and where appropriate, Eurojust, Europol, the European Public Prosecutor's Office, OLAF or any other competent Union body, office or agency shall be considered to be data controllers in accordance with applicable Union data protection rules, for the processing of **operational** personal data under this Regulation.
2. With regard to data uploaded to the JITs collaboration platform by the competent authorities of third countries, one of the JIT space administrators, **designated in the JIT agreement**, is to be considered data controller as regards the personal data exchanged through, and stored in the JITs collaboration platform.
3. eu-LISA shall be considered to be data processor in accordance with Regulation (EU) 2018/1725 as regards the personal data exchanged through, and stored in the JITs collaboration platform.
4. The JITs collaboration platform users shall be **jointly controllers** responsible for **the processing** ~~managing~~ **of** non-operational **personal** data in the JITs collaboration platform.

## Article 20

### Purpose of the processing of personal data

1. The data entered into the JITs collaboration platform shall only be processed for the purposes of:
  - a) the exchange of operational **data** ~~information and evidence~~ between the JITs collaboration platform users;
  - b) the exchange of non-operational data between the JITs collaboration platform users, for the purposes of managing the **JIT** and ~~of~~ **the daily cooperation between JITs collaboration platform users**;

2. Access to the JITs collaboration platform shall be limited to duly authorised staff of the competent Member States' and third country authorities, Eurojust, Europol, the European Public Prosecutor's Office, OLAF and other competent Union bodies, offices or agencies, to the extent needed for the performance of their tasks in accordance with the purposes referred to in paragraph 1, and to what is necessary and proportionate to the objectives pursued.

### *Article 21*

#### **Technical logs**

1. eu-LISA shall ensure that a log is kept of all access to the centralised information system and all data processing operations in the centralised information system, in accordance with paragraph 2.
2. The logs shall show:
  - a) the date, time zone and exact time of accessing the centralised information system;
  - b) the identifying mark of JIT's collaboration platform user who accessed the centralised information system;
  - c) the date, time zone and access time of the operation carried out by the JIT's collaboration platform user;
  - d) the operation carried out by the JIT's collaboration platform user.
3. The logs shall be protected by appropriate technical measures against unauthorised access and shall be kept for three years or for such longer period as required for the termination of ongoing monitoring procedures.
4. On request, eu-LISA shall make the logs available to the competent authorities of the Member States without undue delay.

5. Within the limits of their competences and for the purpose of fulfilling their duties, the national supervisory authorities responsible for monitoring the lawfulness of data processing shall have access to logs upon request.
6. Within the limits of its competences and for the purpose of fulfilling its supervisory duties in accordance with Regulation (EU) 2018/1725, the European Data Protection Supervisor shall have access to logs upon request.

## ***CHAPTER VI***

### ***Final provisions***

#### ***Article 22***

#### **Monitoring and evaluation**

1. eu-LISA shall establish procedures to monitor the development of the JITs collaboration platform as regards the objectives relating to planning and costs and to monitor the functioning of the JITs collaboration platform as regards the objectives relating to the technical output, cost-effectiveness, security and quality of service.
2. The procedures referred to in paragraph 1 shall provide for the possibility to produce regular technical statistics for monitoring purposes.
3. In the event of substantial delays in the development process, eu-LISA shall inform the European Parliament and the Council as soon as possible of the reasons for the delays and of their impact in terms of timeframes and finances.
4. Once the development of the JITs collaboration platform is finalised, eu-LISA shall submit a report to the European Parliament and to the Council explaining how the objectives, in particular relating to planning and costs, were achieved and justifying any divergences.



5. In the event of a technical upgrade of the JITs collaboration platform, which could result in substantial costs, eu-LISA shall inform the European Parliament and the Council before making the upgrade.
6. Two years after the start of operations of the JITs collaboration platform and every year thereafter, eu-LISA shall submit to the Commission a report on the technical functioning of the JITs cooperation platform, including its security.
7. Four years after the start of operations of the JITs collaboration platform and every four years thereafter, the Commission shall conduct an overall evaluation of the JITs collaboration platform. The Commission shall transmit the overall evaluation report to the European Parliament and the Council.
8. The Member States' competent authorities, Eurojust, Europol, the European Public Prosecutor's Office, OLAF and other competent Union bodies, offices and agencies shall provide eu-LISA and the Commission with the information necessary to draft the reports referred to in paragraphs 4 and 7. That information shall not jeopardise working methods or include information that reveals sources, names of staff members or investigations.
9. eu-LISA shall provide the Commission with the information necessary to produce the overall evaluation referred to in paragraph 7.

### *Article 23*

#### **Costs**

The costs incurred in connection with the establishment and operation of the JITs collaboration platform shall be borne by the general budget of the Union.

## Article 24

### Start of operations

1. The Commission, ~~following the favourable opinion of the Management Board of eu-LISA~~, shall determine the date of the start of operations of the JITs collaboration platform, once it is satisfied that the following conditions are met:
  - a) the relevant implementing acts referred to in Article 6 have been adopted;
  - b) eu-LISA has carried out **successfully** a comprehensive test of the JITs collaboration platform, in cooperation with the Member States, using anonymous test data.
2. Where the Commission has determined the date of start of operations in accordance with paragraph 1, it shall communicate that date to the Member States, Eurojust, Europol, the European Public Prosecutor's Office and OLAF.
3. The decision of the Commission determining the date of the start of operations of the JITs collaboration platform, as referred to in paragraph 1, shall be published in the Official Journal of the European Union.
4. The JITs collaboration platform users shall start using the JITs collaboration platform from the date determined by the Commission in accordance with paragraph 1.

## Article 25

### 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.
2. Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where the committee delivers no opinion, the Commission shall not adopt the draft-implementing act and the ~~last~~ **third** subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

## *Article 26*

### **Amendments to Regulation (EU) 2018/1726**

Regulation (EU) 2018/1726 is amended as follows:

(1) in Article 1, the following paragraph 4a is inserted:

“4a. The Agency shall be responsible for the development and operational management, including technical evolutions, of the Joint Investigation Teams (‘JITs’) collaboration platform”;

(2) the following Article 8b is inserted:

### *“Article 8b*

#### **Tasks related to the JITs collaboration platform**

In relation to the JITs collaboration platform, the Agency shall perform:

- a) the tasks conferred on it by Regulation (EU) No XXX/20XX of the European Parliament and of the Council<sup>15</sup>;
- b) tasks relating to training on the technical use of the JITs collaboration platform, including provision of online training materials.

(3) in Article 14, paragraph 1 is replaced by the following:

“1. The Agency shall monitor developments in research relevant for the operational management of SIS II, VIS, Eurodac, the EES, ETIAS, DubliNet, ECRIS-TCN, e-CODEX, the JITs collaboration platform and other large-scale IT systems as referred to in Article 1(5).”;

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<sup>15</sup> Regulation (EU) No XXX/20XX of the European Parliament and of the Council establishing a ~~centralised~~ collaboration platform to support the functioning of Joint Investigation Teams and amending Regulation (EU) 2018/1726 (OJ L ...).”;

(4) in Article 19(1), point (ff) is replaced by the following:

“(ff) adopt reports on the technical functioning of the following:

- i) SIS pursuant to Article 60(7) of Regulation (EU) 2018/1861 of the European Parliament and of the Council<sup>16</sup> and Article 74(8) of Regulation (EU) 2018/1862 of the European Parliament and of the Council<sup>17</sup>;
- ii) VIS pursuant to Article 50(3) of Regulation (EC) No 767/2008 and Article 17(3) of Decision 2008/633/JHA;
- iii) EES pursuant to Article 72(4) of Regulation (EU) 2017/2226;
- iv) ETIAS pursuant to Article 92(4) of Regulation (EU) 2018/1240;
- v) ECRIS-TCN and of the ECRIS reference implementation pursuant to Article 36(8) of Regulation (EU) 2019/816 of the European Parliament and of the Council<sup>18</sup>;
- vi) the interoperability components pursuant to Article 78(3) of Regulation (EU) 2019/817 and Article 74(3) of Regulation (EU) 2019/818;
- vii) the e-CODEX system pursuant to Article 14(1) of Regulation (EU) XXX18;

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<sup>16</sup> Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006 (OJ L 312, 7.12.2018, p. 14).

<sup>17</sup> Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU (OJ L 312, 7.12.2018, p. 56).

<sup>18</sup> Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1).

viii) the JITs collaboration platform pursuant to Article xx of Regulation (EU) XXX19 [this Regulation];

(5) in Article 27(1), the following point (dc) is inserted:

“(dc) the JITs collaboration platform Advisory Group;”.

*Article 27*

**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 all Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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