



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 August 2007

12404/07

LIMITE

EUROJUST 46

COVER NOTE

From : Mr. Michael G. KENNEDY, President of the College and UK National Member of Eurojust
Dated : 26 July 2007
To : Mr. Javier SOLANA, Secretary-General / High Representative

Subject : EUROJUST: Co-operation agreement between Eurojust and the Republic of Croatia

I am very pleased to report that following a series of discussions and negotiations, the College of Eurojust has recently agreed a draft co-operation agreement with the Republic of Croatia. This agreement was negotiated in accordance with Article 27 of the Council Decision of 28 February 2002 creating Eurojust.

On 5 June 2007, Eurojust confirmed its formal approval of the text of the Draft agreement with the Republic of Croatia. The Eurojust Joint Supervisory Body (JSB) has also been consulted and confirmed its formal approval the 19 July 2007.

Accordingly, I am formally enclosing copy of the draft agreement so that the matter can be placed before the Council for approval as required under Article 27(3) of the above Council Decision.

If any matters need clarification, please do not hesitate to contact me.

(Complimentary close)

(signed) Michael G. KENNEDY

**Draft Agreement
between
Eurojust and the Republic of Croatia**

Eurojust and the Republic of Croatia (hereinafter referred to as 'the Parties'),

Having regard to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, and in particular Article 27(1)(c) and (3) thereof;

Having regard to the opinion of the Joint Supervisory Body of Eurojust;

Considering the interests of both the Republic of Croatia and Eurojust in developing a close and dynamic co-operation to meet the present and future challenges posed by serious crime often perpetrated by trans-national organisations;

Considering the necessity to improve judicial co-operation between the Republic of Croatia and Eurojust to facilitate the co-ordination of investigations and prosecutions covering the territory of the Republic of Croatia and one or more Member States of the European Union;

Considering that the Republic of Croatia has ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which also plays a fundamental role in the Eurojust data protection system, and its Additional Protocol of 8 November 2001;

Considering that the Republic of Croatia on 3 October 2005 officially opened accession negotiations with the European Union for membership in the European Union;

Considering the high level of protection of personal data in the European Union, in particular the processing of personal data in accordance with the Eurojust Decision of 28 February 2002 establishing Eurojust, the Eurojust rules of procedure on data protection and other applicable rules;

Respecting the fundamental rights and principles of the European Convention on Human Rights and Fundamental Freedoms, which are reflected in the Charter of Fundamental Rights of the European Union;

HAVE AGREED AS FOLLOWS:

Article 1
Definitions

For the purposes of this Agreement ('this Agreement'):

- a) 'Eurojust Decision' means the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime;
- b) 'Member States' means the Member States of the European Union;
- c) 'College' means the College of Eurojust, as referred to in Article 10 of the Eurojust Decision;
- d) 'National member' means the national member seconded to Eurojust by each Member State of the European Union, as referred to in Article 2(1) of the Eurojust Decision;
- e) 'Assistant' means a person who may assist each national member, as referred to in Article 2(2) of the Eurojust Decision, unless defined otherwise in this Agreement;
- f) 'Administrative Director' means the Administrative Director as referred to in Article 29 of the Eurojust Decision;
- g) 'Eurojust staff' means the staff referred to in Article 30 of the Eurojust Decision;
- h) 'Eurojust rules of procedure on data protection' means the rules of procedure for the processing and protection of personal data at Eurojust, approved by the Council of the European Union on 24 February 2005;

- i) 'Personal data' means any information relating to an identified or identifiable natural person ('data subject'). An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;
- j) 'Processing of personal data' means any operation or set of operations which are performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Article 2

Purpose of this Agreement

The purpose of this Agreement is to enhance the co-operation between the Republic of Croatia and Eurojust in the combating of serious forms of international crime.

Article 3

Scope of co-operation

The Republic of Croatia and Eurojust shall co-operate in the fields of activity as set forth in Articles 6 and 7 of the Eurojust Decision within the competences of Eurojust as set forth in Article 4 of the Eurojust Decision.

Article 4

The competent authority

The competent authority of the Republic of Croatia for the execution of this Agreement is the Ministry of Justice of the Republic of Croatia, represented by the Office of the Attorney General of the Republic of Croatia.

Article 5
Liaison Prosecutor to Eurojust

1. To facilitate co-operation as laid down in this Agreement, and in accordance with the provisions of Article 27(3) of the Eurojust Decision, the Republic of Croatia may second a liaison prosecutor to Eurojust.
2. The liaison prosecutor shall be a public prosecutor subject to the national law of the Republic of Croatia as regards his or her status. The mandate and the duration of secondment shall be determined by the Republic of Croatia.
3. The liaison prosecutor may be assisted by one person. When necessary, the assistant may replace him or her.
4. The Republic of Croatia shall inform Eurojust of the nature and extent of the judicial powers of the liaison prosecutor within its own territory in order to accomplish his or her tasks in accordance with the purpose of this Agreement. The Republic of Croatia shall establish the competence of its liaison prosecutor to act in relation to foreign judicial authorities. Eurojust shall undertake to promote the acceptance and recognition of the prerogatives thus conferred.
5. The liaison prosecutor shall have access to the information contained in the national criminal records or in any other register of the Republic of Croatia in the same way as stipulated by the law of the Republic of Croatia in the case of a prosecutor or person of equivalent competence.
6. The liaison prosecutor may contact the competent authorities of the Republic of Croatia directly.
7. Eurojust shall endeavour to provide sufficient liaison facilities, which shall include the use of office space and telecommunications services, to the extent possible within the constraints of Eurojust's infrastructure and budget. Eurojust may request reimbursement of any or all expenses incurred by Eurojust in providing these facilities.
8. The working documents of the liaison prosecutor shall be held inviolable by Eurojust.

Article 6
Contact point to Eurojust

1. The Republic of Croatia shall put in place or appoint at least one contact point to Eurojust within the office of the competent authority of the Republic of Croatia.
2. The Republic of Croatia shall designate one of its contact points as national correspondent of the Republic of Croatia for terrorism, organised crime and other criminal matters with tasks equivalent to those referred to in Article 12 of the Eurojust Decision.

Article 7
Regular consultations

The Parties shall consult each other regularly, and at least once a year, on the implementation of the provisions of this Agreement. In particular, regular exchanges of views shall take place with regard to the implementation and further developments in the field of data protection and data security. To that end the Data Protection Officer of Eurojust and the Data Protection Agency of the Republic of Croatia will report to each other at least once a year on the state of implementation of the data protection provisions of the Agreement.

Article 8
Operational and strategic meetings

1. The liaison prosecutor, his or her assistant, and other prosecutorial authorities of the Republic of Croatia, including the contact point to Eurojust, may participate in operational and strategic meetings, at the invitation of the President of the College and with the approval of the national members concerned.
2. National members and their assistants, the Administrative Director and Eurojust staff may also attend meetings organised by the liaison prosecutor or other prosecutorial authorities of the Republic of Croatia, including the contact point to Eurojust.

Article 9
Exchange of information

1. The Parties may exchange all information that is necessary, relevant and not excessive, for the purpose of and in accordance with this Agreement, in order to achieve its purpose as laid down in Article 2.
2. All information exchanged between the Parties shall be directed through the contact point to Eurojust and the national members concerned. Once a liaison prosecutor is appointed, all information shall be exchanged between Eurojust and the liaison prosecutor.
3. The Republic of Croatia shall ensure that the contact point to Eurojust and the liaison prosecutor are screened at the appropriate national level for it to be permissible for them to process this information.

Article 10
Transfer of information to Eurojust

1. The Republic of Croatia shall notify Eurojust, simultaneously with or before the transfer of information, of the purpose for which the information is supplied and of any restrictions on its use. This also includes possible access restrictions, restrictions on transmission to the competent authorities of the Member States and terms for deletion or destruction. Notification may also be given at a later stage, when the need for such restrictions becomes apparent after the transfer.
2. Eurojust shall not communicate any information provided by the Republic of Croatia to any third state or body without the consent of the Republic of Croatia and without the appropriate safeguards.
3. Eurojust shall keep a record of data communicated to Eurojust from the Republic of Croatia under this Agreement.

Article 11

Transfer of information to the Republic of Croatia

1. Eurojust shall notify the Republic of Croatia, simultaneously with the transfer of information or before such transfer, of the purpose for which the information is supplied and of any restrictions on its use. This also includes possible access restrictions, restrictions on transmission from the competent authorities of the Member States and terms for deletion or destruction. Notification may also be given at a later stage, when the need for such restrictions becomes apparent after the transfer.
2. The Republic of Croatia shall not communicate any information provided by Eurojust to any third state or body without the consent of the national members concerned and without the appropriate safeguards.
3. The Republic of Croatia shall keep a record of data communicated to the Republic of Croatia from Eurojust under this Agreement.

Article 12

Processing of personal data supplied by the Republic of Croatia

1. Eurojust shall guarantee a level of protection for personal data supplied by the Republic of Croatia at least equivalent to that resulting from the application of the principles of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and subsequent amendments thereto.
2. The principles and rules concerning data protection laid down in the Eurojust Decision, especially Article 17, and in the Eurojust rules of procedure on data protection, shall apply to the processing of personal data supplied by the Republic of Croatia.

Article 13

Processing of personal data supplied by Eurojust

1. The Republic of Croatia shall guarantee a level of protection for personal data supplied by Eurojust at least equivalent to that resulting from the application of the principles of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and subsequent amendments thereto, in particular the Additional Protocol of 8 November 2001.

2. The Republic of Croatia shall apply principles for the processing and protection of personal data supplied by Eurojust at least equivalent to the principles laid down in the Eurojust Decision and in the Eurojust rules of procedure on data protection.

Article 14

Data security

1. Eurojust shall ensure that the personal data received are protected against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or any other unauthorised form of processing in accordance with Article 22 of the Eurojust Decision. The technical measures and organisational arrangements provided in the Eurojust rules of procedure on data protection and any other relevant document shall be applied to information supplied by the Republic of Croatia.
2. The Republic of Croatia shall ensure that the personal data received are protected against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration and access or any other unauthorised form of processing at a level at least equivalent to the principles laid down in Article 22 of the Eurojust Decision. The Republic of Croatia shall put in place protective technical measures and organisational arrangements at least equivalent to those of Eurojust.

Article 15

Rights of data subjects

Data subjects shall have the right of access to personal data concerning them, and shall have the right to request the correction, blocking or deletion of personal data concerning them, processed by Eurojust in accordance with the principles and rules of the Eurojust Decision.

Article 16
Correction and deletion of personal data

1. At the request of the contact point to Eurojust or the liaison prosecutor and under his or her responsibility, Eurojust shall, in accordance with the Eurojust Decision and the Eurojust rules of procedure on data protection, correct, block or delete personal data supplied by the Republic of Croatia if they are incorrect or incomplete or if their input or storage contravenes this Agreement. Eurojust shall confirm the correction, blocking or deletion to the Republic of Croatia.
2. Where Eurojust notes that personal data transmitted to the Republic of Croatia are incorrect or incomplete or if their input or storage contravenes this Agreement or the Eurojust Decision, Eurojust shall request the contact point to Eurojust or the liaison prosecutor to take necessary steps to correct, block or delete the data. The Republic of Croatia shall confirm the correction, blocking or deletion to Eurojust.
3. In the cases referred to in paragraphs 1 and 2, all the suppliers and addressees of such data shall be notified immediately. In accordance with the rules applicable to them, the addressees shall then correct, block or delete those data in their own systems.
4. The Republic of Croatia shall apply principles for the correction, blocking and deletion of personal data supplied by Eurojust at least equivalent to the principles laid down in Article 20 of the Eurojust Decision and in the Eurojust rules of procedure on data protection.
5. When the College is dealing with the processing of data involving individuals under the jurisdiction of the Republic of Croatia in accordance with Article 17(4) of the Eurojust Decision, the liaison prosecutor or other prosecutorial authorities of the Republic of Croatia, including the contact point to Eurojust, may participate in the meeting of the College.

Article 17
Liability

1. The Republic of Croatia shall be liable, in accordance with its national law, for any damage caused to an individual as a result of legal or factual errors in data exchanged with Eurojust. The Republic of Croatia shall not claim that Eurojust had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party.

2. Without prejudice to Article 24 of the Eurojust Decision, if legal or factual errors occurred as a result of data erroneously communicated by Eurojust or one of the Member States of the European Union or another third state or third body, Eurojust shall be bound to repay, upon request, the amounts paid as compensation under paragraph 1, unless the data were used in breach of this Agreement. The provisions of this paragraph shall also apply where the legal or factual errors occurred as a result of failures on the part of Eurojust or one of the Member States of the European Union or another third state or third body to comply with its obligations.
3. In cases where Eurojust is obliged to repay to Member States of the European Union or another third state or third body amounts awarded as compensation for damages to an injured party, and the damages are due to the failure of the Republic of Croatia to comply with its obligations under this Agreement, the Republic of Croatia shall be bound to repay on request the amounts which Eurojust paid to a Member State or to another third state or third body to make up for the amounts it paid in compensation.
4. The Parties shall not require each other to pay compensation for damages under paragraphs 2 and 3 to the extent that the compensation for damages was enforced as punitive, increased or other non-compensatory damages.

Article 18

Settlement of disputes

1. Any dispute between the Parties concerning the interpretation or application of this Agreement, or any question affecting the relationship between the Parties which is not settled amicably, shall be referred for final decision to a tribunal of three arbitrators at the request of either Party to the dispute. Each Party shall appoint one arbitrator. The third arbitrator, who shall be chairman of the tribunal, is to be chosen by the first two arbitrators.
2. Unless the Parties agree otherwise, the tribunal shall determine its own procedure.
3. The tribunal shall reach its decision by a majority of votes. The chairman shall have the deciding vote. The decision shall be final and binding on the Parties to the dispute.
4. Each Party reserves the right to suspend its obligations under this Agreement where the procedure laid down in this Article is applied or might be applied in accordance with paragraph 1, or in any other case where a Party is of the opinion that the obligations incumbent on the other Party under this Agreement have been breached.

Article 19
Oversight of implementation

The execution and implementation of this Agreement by the Parties shall be subject to oversight in accordance with their applicable law and procedures. The Parties shall utilise their respective administrative, judicial or supervisory bodies that will ensure an appropriate level of independence of the oversight process.

Article 20
Termination of this Agreement

1. This Agreement may be terminated by each Party within three months' notice.
2. In case of termination, the Parties shall reach agreement on the continued use and storage of the information that has already been communicated between them. If no agreement is reached, either of the Parties is entitled to request deleting the information which has been communicated.
3. In any case, this Agreement will be terminated automatically, without the intervention of the concerned Parties, on the day immediately following the accession of the Republic of Croatia into the European Union.

Article 21
Amendments

1. This Agreement may be amended by mutual consent between the Parties at any time in accordance with their respective statutory requirements.
2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.

Article 22
Entry into force

This Agreement shall enter into force on the date of receipt of the latter written notification by which the Parties notify each other, through appropriate channels, that all legal requirements provided by their internal legislation and necessary for its entry into force, have been fulfilled.

Done at _____ this _____ day of _____ two thousand and seven in duplicate in the Croatian and English languages, each text being equally authentic.

For the Republic of Croatia

For Eurojust

Title

Title
