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COVER NOTE

from : Eurojust
to : Presidency of the Council
Subject : **Draft Agreement on Co-operation between Eurojust and the former
Yugoslav Republic of Macedonia**

Delegations will find in the annex an Eurojust letter and the draft Agreement on Co-operation between Eurojust and the former Yugoslav Republic of Macedonia.



EUROJUST
P.O. Box 16183
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THE NETHERLANDS

At the attention of the President of the Council

H.E. Rachida Dati
Minister of Justice of the French Republic

The Hague, 29 October 2008

Dear Excellency,

Eurojust is pleased to be able to submit for your approval in accordance with Article 27(3) of the Eurojust Decision, the attached draft Cooperation Agreement between Eurojust and FYROM.

Eurojust is further pleased to state that the negotiations with FYROM have concluded recently, and full agreement has been reached on the attached document. To enable the final ratification, the agreement is now submitted to yourself for approval. As required, it has also already found the approval of the College of Eurojust by decision of 6 May 2008, as well as the approval of the Joint Supervisory Body (JSB) by decision of 27 October 2008.

The agreement governs both modalities for closer and increased cooperation, as well as provisions for the exchange of general as well as personal data, hence the close cooperation and involvement of Eurojust's Data Protection Officer, as well as the consultation with the JSB.

Following previous EU-practice in respect of agreements concluded with FYROM, the agreement will not be signed by both parties, but will enter into force following an exchange of notifications by Eurojust and FYROM.

José Luís Lopes da Mota, President of Eurojust and National Member for Portugal
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**Draft Agreement on Co-operation between
Eurojust and the former Yugoslav Republic of Macedonia**

Eurojust and the former Yugoslav Republic of Macedonia (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 27 October 2008;

Considering the interests of both the former Yugoslav Republic of Macedonia and Eurojust in developing a close and dynamic co-operation to meet the present and future challenges posed by serious transnational crime including terrorism;

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

Considering that the former Yugoslav Republic of Macedonia has ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data that also plays a fundamental role in the Eurojust data protection system;

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:

- a) 'Eurojust Decision' means the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as last amended by the Council Decision of 18 June 2003;
- 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 a National Member or the Liaison Prosecutor, as referred to in Article 2(2) of the Eurojust Decision and in Article 5 of this agreement respectively,;
- 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 on cooperation between Eurojust and the former Yugoslav Republic of Macedonia ('this Agreement') is to enhance the co-operation between the former Yugoslav Republic of Macedonia and Eurojust in the combating of serious forms of transnational crime including terrorism.

Article 3

Scope of co-operation

1. The former Yugoslav Republic of Macedonia 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.
2. Where Eurojust's mandate is changed to cover fields of activities and/or competences in addition to those set forth in paragraph 1, Eurojust may, from the date when the change to Eurojust's mandate enters into force, submit to the former Yugoslav Republic of Macedonia in writing a proposal to extend the scope of application of this Agreement to include the new mandate. This Agreement shall apply in relation to the new mandate as of the date on which Eurojust receives the written acceptance by the said country in accordance with its internal procedures.

Article 4
Competency for the execution of this Agreement

1. The competent authority of the former Yugoslav Republic of Macedonia for the execution of this Agreement is the Public Prosecutor's Office of the former Yugoslav Republic of Macedonia.
2. Within Eurojust and in accordance with Articles 6 and 7 of the Eurojust Decision, the national members concerned and the College are competent for the execution of this Agreement.

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 former Yugoslav Republic of Macedonia may second a liaison prosecutor to Eurojust.
2. The liaison prosecutor shall be a public prosecutor subject to the national law of the former Yugoslav Republic of Macedonia as regards his or her status. The mandate and the duration of secondment shall be determined by the former Yugoslav Republic of Macedonia.
3. The liaison prosecutor may be assisted by one person. When necessary, the assistant may replace him or her.
4. The former Yugoslav Republic of Macedonia 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 former Yugoslav Republic of Macedonia shall establish the competence of its liaison prosecutor to act in relation to foreign judicial authorities.
5. The liaison prosecutor shall have access to the information contained in the national criminal records or in any other register of the former Yugoslav Republic of Macedonia in the same way as stipulated by the former Yugoslav Republic of Macedonia's law in the case of a prosecutor or person of equivalent competence.
6. The liaison prosecutor may contact the competent authorities of the former Yugoslav Republic of Macedonia 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 the Eurojust 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 former Yugoslav Republic of Macedonia shall put in place or appoint at least one contact point to Eurojust within the office of the competent authority of the former Yugoslav Republic of Macedonia. This appointment shall be duly notified to Eurojust.
2. The former Yugoslav Republic of Macedonia shall designate one of its contact points as national correspondent for terrorism matters as referred to in Article 12 of the Eurojust Decision.

Article 7

Operational and strategic meetings

1. The liaison prosecutor, his or her assistant, and other former Yugoslav Republic of Macedonia competent authorities, 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 former Yugoslav Republic of Macedonia competent authorities, including the contact point to Eurojust.

Article 8

Exchange of information

1. In accordance with this Agreement and any applicable internal rules, the Parties may exchange all information that is necessary, relevant and not excessive in order to achieve the purpose of this Agreement as laid down in Article 2.
2. The requesting Party shall notify the other Party of the purpose for which the information is requested. In the case of spontaneous transfer of information, the Party providing information shall notify the other Party of the purpose for which the information is supplied.
3. The Party providing the information may impose restrictions to the use of the information provided. This also includes possible access restrictions, restrictions on further transmission 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.
4. The Parties shall not communicate any information provided by the other Party to any third state or body without the consent of the latter and without the appropriate safeguards.
5. The Parties shall keep a record of the transmission and receipt of data communicated under this Agreement.

Article 9

Channels of transmission

1. The information shall be exchanged:
 - a) either between the liaison prosecutor or, if no liaison prosecutor is appointed or otherwise available, the contact point to Eurojust and the national members concerned or the College; or
 - b) directly between the judicial authority in charge of investigating and/or prosecuting the case and the national members concerned or the College. In this event, the liaison prosecutor shall be informed about any such information exchanges.
2. The Parties are not precluded from agreeing to use other channels for the exchange of information in particular cases.
3. Both Parties shall ensure that its respective representatives are authorised to exchange information at appropriate levels and are adequately screened.

Article 10
Privacy and Data Protection

1. The Parties recognise that the appropriate and adequate handling and processing of personal data they acquire from each other is of critical importance to preserving confidence in the implementation of this Agreement.
2. The Parties shall guarantee a level of protection for personal data supplied by the other Party at least equivalent to that resulting from the application of the principles contained in 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 as well as in the principles laid down in the Eurojust Decision and in the Eurojust rules of procedure on data protection.
3. In respect of personal data exchanged pursuant to this Agreement, the Parties shall ensure that
 - a) the personal data are fairly and lawfully processed;
 - b) the personal data provided are adequate, relevant and not excessive in relation to the specific purpose of the request or transfer as defined in Article 8(2);
 - c) the personal data are retained only so long as necessary for the purpose for which the data were provided or further processed in accordance with this Agreement; and
 - d) possibly inaccurate personal data are timely brought to the attention of the receiving Party in order that appropriate corrective action is taken.

Article 11

Transmission of Special Categories of Personal Data

1. Personal data revealing racial or ethnic origin, political opinions or religious or other beliefs, trade union membership or concerning health and sexual life may only be provided if they are strictly necessary for a purpose set forth in Article 2 of this Agreement.
2. The Parties shall take adequate safeguards, in particular appropriate security measures, in order to comply with the special sensitivity of the categories of personal data mentioned in paragraph 1.

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Article 12

Right of access to personal data

1. The data subject is entitled to have access to personal data exchanged under this Agreement. Access is exercised in accordance with the law applicable to the Party to which the request is submitted. That Party shall ensure that its decision is communicated to the data subject in a timely manner. Access to personal data shall be denied if providing such access may jeopardise
 - a) the purposes of the processing;
 - b) investigations or prosecution conducted by the competent authorities in the former Yugoslav Republic of Macedonia or by the competent authorities in the Member States which Eurojust is assisting;
 - c) the rights and freedoms of third parties.
2. The Party to which the request is submitted shall give the other Party the opportunity to express its opinion as to the possible existence of one of the grounds to deny access as set forth in paragraph 1.
3. This Article is without prejudice to any rights an individual may have under the law applicable to the transmitting Party to seek release of information from that Party, or other appropriate relief.

Article 13

Right of correction, blockage and deletion of personal data

1. The data subject shall be entitled to request to the Party which has processed data relating to him/her under this Agreement to correct, block or delete those data if they are incorrect or incomplete or if their collection, further processing or storage contravenes this Agreement or the respective rules applicable to the Parties.
2. Where a Party becomes aware either via the request of the data subject, via notification from the transmitting Party or via some other way that information it has received from the other Party is not accurate, it shall take all appropriate measures to safeguard against erroneous reliance on such information, which may include supplementation, deletion or correction of such information.
3. Where a Party becomes aware that information it possesses causes significant doubt as to the accuracy of information received pursuant to this Agreement, or an assessment made by the other Party of the accuracy of information or the reliability of a source, it shall inform the other Party thereof.

Article 14

Time limits for the storage of personal data

Personal data shall be stored only for so long as necessary for the achievements of the purpose of this Agreement or for the purposes for which the data were collected or further processed according to Article 2 of this Agreement.

Article 15

Data security

The Parties ensure that the necessary technical measures and organisational arrangements are utilised to protect personal data received under this Agreement against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration, access or any unauthorised form of processing. The Parties in particular ensure that only those authorised to access personal data can have access to such data.

Article 16

Liability

1. The former Yugoslav Republic of Macedonia 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 former Yugoslav Republic of Macedonia 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 former Yugoslav Republic of Macedonia failure to comply with its obligations under this Agreement, the former Yugoslav Republic of Macedonia 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 17

Regular consultations

1. 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.
2. To that end the Data Protection Officer of Eurojust and the Data Protection Authority of the former Yugoslav Republic of Macedonia will report to each other at least once a year on the state of implementation of the data protection provisions of the Agreement.

Article 18

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 19

Expenses

Without prejudice to Article 5(7), neither Party shall make any pecuniary claim against the other Party for expenses arising out of the execution of this Agreement. Should expenses of an extraordinary nature arise out of the execution of this Agreement, the Parties may consult with a view to determining the manner in which they shall be addressed.

Article 20
Settlement of disputes

1. On request of either of them, the Parties shall promptly meet in order to solve any dispute concerning the interpretation or application of this Agreement or any question affecting the relationship between them.
2. If a dispute on the interpretation or application of this Agreement cannot be resolved, the Parties may enter into negotiations on the specific issue.

Article 21
Amendments

1. This Agreement may be amended by mutual consent between the Parties in written form at any time. Such amendment will enter into force after the Parties have notified each other of the completion of their respective internal requirements
2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either party.

Article 22
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 under the conditions set out in this 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 two 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 former Yugoslav Republic of Macedonia to the European Union.

Article 23

Entry into force

As soon as the Parties have complied with their legal requirements, they shall notify each other in writing of the completion of the internal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the day following the last notification.
