Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA

REGULATION (EU) 2018/1727 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA

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 85 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[(1)],

Whereas:

(1) Eurojust was set up by Council Decision 2002/187/JHA[(2)] as a Union body with legal personality, to stimulate and to improve coordination and cooperation between competent judicial authorities of the Member States, particularly in relation to serious organised crime. Eurojust's legal framework has been amended by Council Decisions 2003/659/JHA[(3)] and 2009/426/JHA[(4)].

(2) Article 85 of the Treaty on the Functioning of the European Union (TFEU) provides for Eurojust to be governed by a regulation, adopted in accordance with the ordinary legislative procedure. It also requires determining arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities.

(3) Article 85 TFEU also provides that Eurojust's mission is to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by the European Union Agency for Law Enforcement Cooperation (Europol).

(4) This Regulation aims to amend and expand the provisions of Decision 2002/187/JHA. Since the amendments to be made are of substantial number and nature, Decision 2002/187/JHA should in the interests of clarity be replaced in its entirety in relation to the Member States bound by this Regulation.

(5) As the European Public Prosecutor's Office (EPPO) has been established by means of enhanced cooperation, Council Regulation (EU) 2017/1939[(5)] is binding in its entirety and directly applicable only to Member States that participate in enhanced cooperation.

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Therefore, for those Member States which do not participate in the EPPO, Eurojust remains fully competent for forms of serious crime listed in Annex I to this Regulation.

(6) Article 4(3) of the Treaty on European Union (TEU) recalls the principle of sincere cooperation by virtue of which the Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the TEU and the TFEU.

(7) In order to facilitate cooperation between Eurojust and the EPPO, Eurojust should address issues of relevance to the EPPO whenever necessary.

(8) In light of the establishment of the EPPO by means of enhanced cooperation, the division of competences between the EPPO and Eurojust with respect to crimes affecting the financial interests of the Union needs to be clearly established. From the date on which the EPPO assumes its tasks, Eurojust should be able to exercise its competence in cases which concern crimes for which the EPPO is competent, where those crimes involve both Member States which participate in enhanced cooperation on the establishment of the EPPO and Member States which do not participate in such enhanced cooperation. In such cases, Eurojust should act at the request of the non-participating Member States or at the request of the EPPO. Eurojust should in any case remain competent for offences affecting the financial interests of the Union whenever the EPPO is not competent or where, although the EPPO is competent, it does not exercise its competence. The Members States which do not participate in enhanced cooperation on the establishment of the EPPO may continue to request Eurojust's support in all cases regarding offences affecting the financial interests of the Union. The EPPO and Eurojust should develop close operational cooperation in line with their respective mandates.

(9) In order for Eurojust to fulfil its mission and develop its full potential in the fight against serious cross-border crime, its operational functions should be strengthened by reducing the administrative workload of national members, and its European dimension enhanced through the Commission's participation in the Executive Board and the increased involvement of the European Parliament and national parliaments in the evaluation of its activities.

(10) Therefore, this Regulation should determine the arrangements for parliamentary involvement, modernising Eurojust's structure and simplifying its current legal framework, while maintaining those elements that have proven to be efficient in its operation.

(11) The forms of serious crime affecting two or more Member States for which Eurojust is competent should be clearly laid down. In addition, cases which do not involve two or more Member States, but which require a prosecution on common bases, should be defined. Such cases may include investigations and prosecutions affecting only one Member State and a third country where an agreement has been concluded with that third country or where there may be a specific need for Eurojust's involvement. Such prosecution may also refer to cases which affect one Member State and have repercussions at Union level.

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(12) When exercising its operational functions in relation to concrete criminal cases, at the request of the competent authorities of Member States or on its own initiative, Eurojust should act either through one or more of the national members or as a College. By acting on its own initiative, Eurojust may take a more proactive role in coordinating cases, such as by supporting the national authorities in their investigations and prosecutions. This may include involving Member States that might not initially have been included in the case and discovering links between cases based on the information it receives from Europol, the European Anti-Fraud Office (OLAF), the EPPO and national authorities. This also allows Eurojust to produce guidelines, policy documents and casework-related analyses as part of its strategic work.

(13) At the request of a Member State's competent authority or of the Commission, it should also be possible for Eurojust to assist with investigations involving only that Member State but which have repercussions at Union level. Examples of such investigations include cases where a member of a Union institution or body is involved. Such investigations also cover cases which involve a significant number of Member States and could potentially require a coordinated European response.

(14) The written opinions of Eurojust are not binding on Member States, but should be responded to in accordance with this Regulation.

(15) To ensure Eurojust can support and coordinate cross-border investigations appropriately, it is necessary that all national members have the necessary operational powers with respect to their Member State and in accordance with the law of that Member State in order to cooperate between themselves and with national authorities in a more coherent and effective way. National members should be granted those powers that allow Eurojust to appropriately achieve its mission. Those powers should include accessing relevant information in national public registers, directly contacting and exchanging information with competent authorities and participating in joint investigation teams. National members may, in accordance with their national law, retain the powers which are derived from their capacity as national authorities. In agreement with the competent national authority or in urgent cases, national members may also order investigative measures and controlled deliveries, and issue and execute requests for mutual legal assistance or mutual recognition. Since those powers are to be exercised in accordance with national law, the courts of Member States should be competent to review those measures, in accordance with the requirements and procedures laid down by national law.

(16) It is necessary to provide Eurojust with an administrative and management structure that allows it to perform its tasks more effectively, complies with the principles applicable to Union agencies, and fully respects fundamental rights and freedoms, while maintaining Eurojust's special characteristics and safeguarding its independence in the exercise of its operational functions. To that end, the functions of the national members, the College and the Administrative Director should be clarified and an Executive Board established.

(17) Provisions should be laid down to clearly distinguish between the operational and the management functions of the College, thus reducing the administrative burden on national members to a minimum so that the focus is put on Eurojust's operational

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work. The management tasks of the College should include in particular the adoption of Eurojust's work programmes, budget, annual activity report, and working arrangements with partners. The College should exercise the power of appointing authority with respect to the Administrative Director. The College should also adopt Eurojust's rules of procedure. Since those rules of procedure may have an impact on the judicial activities of the Member States, implementing powers should be conferred on the Council to approve those rules.

(18) To improve Eurojust's governance and streamline procedures, an Executive Board should be established to assist the College in its management functions and to allow for streamlined decision-making on non-operational and strategic issues.

(19) The Commission should be represented in the College when the College exercises its management functions. The Commission's representative in the College should be also its representative on the Executive Board, to ensure non-operational supervision of Eurojust and to provide it with strategic guidance.

(20) In order to ensure the efficient day-to-day administration of Eurojust, the Administrative Director should be its legal representative and manager, accountable to the College. The Administrative Director should prepare and implement the decisions of the College and the Executive Board. The Administrative Director should be appointed on the basis of merit, and of his or her documented administrative and managerial skills, as well as relevant competence and experience.

(21) A President and two Vice-Presidents of Eurojust should be elected by the College from among the national members for a term of office of four years. When a national member is elected President, the Member State concerned should be able to second another suitably qualified person to the national desk and to apply for compensation from Eurojust's budget.

(22) Suitably qualified persons are persons who have the necessary qualifications and experience to perform the tasks required to ensure that the national desk functions effectively. They may have the status of a deputy or Assistant to the national member who has been elected President or they may have a more administrative or technical function. Each Member State should be able to decide on its own requirements in this regard.

(23) Quorum and voting procedures should be regulated in Eurojust's rules of procedure. In exceptional cases, where a national member and his or her deputy are absent, the Assistant of the national member concerned should be entitled to vote in the College if the Assistant has the status of a magistrate, i.e. a prosecutor, judge or representative of a judicial authority.

(24) Since the compensation mechanism has a budgetary impact, this Regulation should confer implementing powers to determine that mechanism on the Council.

(25) The setting up of an on-call coordination mechanism within Eurojust is necessary to make Eurojust more efficient and enable it to be available around the clock to intervene in urgent cases. Each Member State should ensure that their representatives in the on-call coordination mechanism are available to act 24 hours a day, seven days a week.

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(26) Eurojust national coordination systems should be set up in the Member States to coordinate the work carried out by the national correspondents for Eurojust, the national correspondent for terrorism matters, any national correspondent for issues relating to the competence of the EPPO, the national correspondent for the European Judicial Network and up to three other contact points, as well as representatives in the network for joint investigation teams and representatives in the networks set up by Council Decisions 2002/494/JHA[(6)], 2007/845/JHA[(7)] and 2008/852/JHA[(8)]. Member States may decide that one or more of those tasks are to be performed by the same national correspondent.

(27) For the purposes of stimulating and strengthening coordination and cooperation between national investigating and prosecuting authorities, it is crucial that Eurojust receive information from national authorities that is necessary for the performance of its tasks. To that end, competent national authorities should inform their national members of the setting up and results of joint investigation teams without undue delay. Competent national authorities should also inform national members without undue delay of cases falling under the competence of Eurojust that directly involve at least three Member States and for which requests or decisions on judicial cooperation have been transmitted to at least two Member States. Under certain circumstances, they should also inform national members of conflicts of jurisdiction, controlled deliveries and repeated difficulties in judicial cooperation.

(28) Directive (EU) 2016/680 of the European Parliament and of the Council[(9)] sets out harmonised rules for the protection and the free movement of personal data processed 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. In order to ensure the same level of protection for natural persons through legally enforceable rights throughout the Union and to prevent divergences hampering the exchange of personal data between Eurojust and competent authorities in Member States, the rules for the protection and the free movement of operational personal data processed by Eurojust should be consistent with Directive (EU) 2016/680.

(29) The general rules of the distinct Chapter of Regulation (EU) 2018/1725 of the European Parliament and of the Council[(10)] on the processing of operational personal data should apply without prejudice to the specific data protection rules of this Regulation. Such specific rules should be regarded as *lex specialis* to the provisions in that Chapter of Regulation (EU) 2018/1725 (*lex specialis derogat legi generali*). In order to reduce legal fragmentation, specific data protection rules in this Regulation should be consistent with the principles underpinning that Chapter of Regulation (EU) 2018/1725, as well as with the provisions of that Regulation relating to independent supervision, remedies, liability and penalties.

(30) The protection of the rights and freedoms of data subjects requires a clear attribution of responsibilities for data protection under this Regulation. Member States should be responsible for the accuracy of data they have transmitted to Eurojust and which have been processed unaltered by Eurojust, for keeping such data up to date and for the legality of transmitting those data to Eurojust. Eurojust should be responsible for