



**COUNCIL OF
THE EUROPEAN UNION**

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**EUROJUST 46
COPEN 92**

NOTE

from : Mr José Luís Lopes da Mota, President of Eurojust
to Ministry of Justice, President of the Council (JHA Council)
Subject : Cooperation Eurojust and Switzerland - Approval by Council

Dear Excellency,

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

Eurojust is further pleased to state that the negotiations with Switzerland have concluded recently, and full agreement has been reached on the attached document. For final ratification, the agreement is currently pending introduction to the Swiss parliament, and as for Eurojust's compliance mechanisms, it has found the approval of the College of Eurojust by decision of 27 March 2008, the approval of the Joint Supervisory Body (JSB) by decision of 24 April 2008, and is now submitted to yourself as the last instance.

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.

It is hoped, that akin to the previous agreement's concluded with third states, this agreement will continue to increase not only the amount of cases in which cooperation occurs, but also the quality of the work by removing the otherwise constant difficulties in compliance with various data protection regimes and requests for international legal assistance.

As the threat of organised crime specifically expands geographically, as well as in size, this agreement is seen from the point of view of Eurojust, as an important step to enlarge the ever-increasing geographical area in which Eurojust can operate and in which the concept of mutual assistance and judicial cooperation is significantly increased; and as a direct results limits the ability for criminal enterprises / activity to feel potentially sheltered from the reach of the law, by exploiting practical difficulties in cooperation between states.

As such, Eurojust would welcome the Council's approval on this agreement, and enable Eurojust, as well as following as a direct consequence, individual Member States, to benefit from the cooperation with Switzerland, to ensure, and be able to enhance, the safety of all of the EU's citizen's, in a demonstrable increase of the coherent and focused fight against crime in general, but specifically organised crime and terrorism.

Yours faithfully,



JOSÉ LUÍS LOPES DA MOTA

CC. Mr. Rafael Fernández- Pita y González
CC. Katja Rejec-Longar
CC. Mr. Matevz Pezdirc
CC. Mr. Helmut Hartman

**Agreement between
Eurojust and Switzerland**

Eurojust and Switzerland (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 24 April 2008;

Considering the interests of both Switzerland and Eurojust in developing a close and dynamic cooperation to meet the present and future challenges posed by serious forms of international crime;

Considering the wish to improve judicial cooperation between Switzerland and Eurojust to facilitate the coordination of investigations and prosecutions covering the territory of Switzerland and one or more Member States of the European Union;

Considering that Switzerland has a high level of protection of personal data and 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 Council 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;

Considering that Switzerland is already closely associated with the justice and law enforcement cooperation of the Member States through the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis and the Cooperation Agreement signed between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests;

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 ¹;
- 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) 'Liaison Prosecutor' means a Swiss Liaison Officer or a Swiss Liaison Magistrate as referred to in Article 27(3) of the Eurojust Decision;

¹ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63, 6.3.2002, p. 1. as last amended by Decision 2003/659/JHA (OJ L 245, 29.9.2003, p. 44).

- f) 'Assistant' means a person who may assist each National Member, as referred to in Article 2(2) of the Eurojust Decision, or the Liaison Prosecutor, as referred to in Article 6 of the Agreement;
- g) 'Administrative Director' means the Administrative Director as referred to in Article 29 of the Eurojust Decision;
- h) 'Eurojust staff' means the staff referred to in Article 30 of the Eurojust Decision;
- i) '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 2005¹;
- j) '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;
- k) '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 ('this Agreement') is to enhance the co-operation between Switzerland and Eurojust in the combating of serious forms of international crime.

¹ OJ C 68, 19.3.2005, p. 1.

Article 3
Scope of Cooperation

1. Switzerland and Eurojust cooperate in the fields of activity covered in Article 4 of the Eurojust Decision. The cooperation may involve all tasks of Eurojust mentioned in Articles 6 and 7 of the Eurojust Decision. Any cooperation is subject to the Parties' applicable laws and legal frameworks.
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 Switzerland in writing a proposal to extend the scope of application of this Agreement in relation to 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 Switzerland in accordance with its internal procedures.
3. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under the respective laws of the Parties.

Article 4
Relationship to other instruments on judicial cooperation
in criminal matters

This Agreement shall not affect the provisions in bilateral or multilateral agreements in the field of judicial cooperation in criminal matters between Switzerland and the Member States, nor the provisions in agreements concluded between the European Union and Switzerland, or between the European Community and its Member States, of the one part, and Switzerland, of the other part.

Article 5
The competent authority

1. The competent authority of Switzerland for the execution of this Agreement is the Federal Office of Justice of the Federal Department of Justice and Police.

2. Switzerland will notify Eurojust in writing of any changes of the competent authority in the sense of this Article. Such a change becomes effective as of the date on which Switzerland receives the written acceptance by Eurojust.
3. 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 6

Liaison Prosecutor to Eurojust

1. To facilitate cooperation as laid down in this Agreement, and in accordance with the provisions of Article 27(3) of the Eurojust Decision, Switzerland may second a liaison prosecutor to Eurojust.
2. The Liaison Prosecutor shall be regarded as a formal representative of Switzerland with respect to Eurojust.
3. The Liaison Prosecutor, his mandate and the duration of secondment shall be determined by Switzerland subject to its national law.
4. The Liaison Prosecutor may be assisted by one person. When necessary, the assistant may replace him or her.
5. Switzerland 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. Switzerland 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.
6. The Liaison Prosecutor shall have access to the information contained in the national criminal records or in any other register of Switzerland in the same way as stipulated by Swiss law in the case of a prosecutor or person of equivalent competence.
7. The Liaison Prosecutor may contact the Swiss prosecutorial authorities directly.
8. 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 expenses incurred by Eurojust in providing these facilities. Such reimbursement can only be requested for expenses incurred in the three months previous to such a request.
9. The working documents of the Liaison Prosecutor shall be held inviolable by Eurojust.

Article 7
Contact Point to Eurojust

1. The Federal Office of Justice of the Federal Department of Justice and Police is the contact point of Switzerland to Eurojust.
2. For operational purposes, the Swiss cantonal and federal authorities and Eurojust shall, within their competences, be able to enter into direct contact with each other. In such cases, the concerned Swiss authorities shall inform the Federal Office of Justice.

Article 8
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.

Article 9
Operational and Strategic Meetings

1. The Liaison Prosecutor, his or her assistant, and other Swiss prosecutorial 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. The Swiss competent authority may ask Eurojust either to participate in or convene a meeting.
2. National members and their assistants, the Administrative Director and Eurojust staff may also attend meetings organised by the Liaison Prosecutor or other Swiss prosecutorial authorities, including the contact point to Eurojust.

Article 10
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.

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

Article 11

Transfer of information to Eurojust

1. Switzerland 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 Switzerland to any third State or body without the consent of Switzerland and without the appropriate safeguards.
3. Eurojust shall keep a record of data communicated to Eurojust from Switzerland under this Agreement.

Article 12
Transfer of information to Switzerland

1. Eurojust shall notify Switzerland, simultaneous 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. Switzerland 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. Switzerland shall keep a record of data communicated to Switzerland from Eurojust under this Agreement.

Article 13
Processing of personal data supplied by Switzerland

1. Eurojust shall guarantee a level of protection for personal data supplied by Switzerland 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, such as the Council of Europe Additional Protocol of 8 November 2001 for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows.
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 Switzerland.

Article 14

Processing of personal data supplied by Eurojust

1. Switzerland 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 above-mentioned Council of Europe Convention and, as from the date of its ratification and entry into force for Switzerland, of the Council of Europe Additional Protocol of 8 November 2001 for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows.
2. Switzerland 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 15

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 Switzerland.
2. Switzerland 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. Switzerland shall guarantee protective technical measures and organisational arrangements at least equivalent to those of Eurojust.

Article 16
Rights of Data Subjects

Data subjects shall have the right of access to, and to request the correction, blocking or deletion of personal data concerning them. These rights are determined in accordance with the law applicable to the Party to which the request is submitted.

Article 17
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 Switzerland if they are incorrect or incomplete or if their input or storage contravenes this Agreement. Eurojust shall confirm the correction, blocking or deletion to Switzerland.
2. Where Eurojust notes that personal data transmitted to Switzerland are incorrect or incomplete or if their input or storage contravenes this Agreement or the Eurojust Decision, it shall request the contact point to Eurojust or the Liaison Prosecutor to take necessary steps to correct, block or delete the data. Switzerland 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. Switzerland 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 Swiss jurisdiction in accordance with Article 17(4) of the Eurojust Decision, the Liaison Prosecutor or other Swiss prosecutorial authorities, including the contact point to Eurojust, may participate in the meeting of the College. The College shall not consider the matter as closed without having given the Swiss Liaison Prosecutor or the Swiss competent authority the possibility to express their views about the matter.

Article 18

Liability

1. Switzerland 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. Switzerland 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 Switzerland's failure to comply with its obligations under this Agreement, Switzerland 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 19

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 20
Termination of the 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 two Parties is entitled to request deleting the information which has been communicated.

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 and internal procedures.
2. The Parties shall enter into consultations with respect to the amendment of this Agreement at the request of either of them.
3. Amendments shall enter into force on the date on which the Parties have notified each other in writing that their legal requirements have been complied with.

Article 22
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. This Agreement shall enter into force on the day following the last notification.

Done at this day of 2008 in duplicate in the German and English languages, each text being equally authentic.

For Switzerland

For Eurojust

Head of the Federal Department
of Justice and Police

President of the College
