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COVER NOTE

From:	Ms Michèle Coninsx, President of Eurojust
date of receipt:	10 June 2015
To:	H.E. Mr Dzintars Rasnačs, Minister of Justice of Latvia
Subject:	Draft Agreement on Cooperation between Eurojust and Montenegro

Delegations will find attached a letter from the President of Eurojust (Annex I) related to the draft Agreement on Cooperation between Eurojust and Montenegro (Annex 2) and the opinion of the Joint Supervisory Body of Eurojust on this draft Agreement (Annex 3).

A draft Council Decision to approve the conclusion of the Agreement will issue separately (doc. 10793/15).



EUROJUST

The European Union's Judicial Cooperation Unit

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D150167

To the attention of the President of the Council of the EU
H.E. Mr Dzintars Rasnačs
Minister of Justice of Latvia

The Hague, 10 June 2015

Approval by the Council of the European Union of the draft Agreement on Cooperation between Eurojust and Montenegro

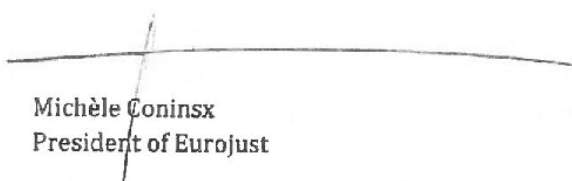
Your Excellency,

Eurojust is pleased to submit for your approval, in accordance with Article 26a(2) of the Council Decision of 28 February 2002 setting up Eurojust, as last amended by Council Decision 2009/426/JHA of 16 December 2008, the attached draft Agreement on Cooperation between Eurojust and Montenegro.

Eurojust is further pleased to state that the negotiations with Montenegro were concluded recently and full agreement has been reached on the attached document. As required, the draft Agreement on Cooperation was approved by the College of Eurojust on 9 June 2015, and, by decision of 23 April 2015, has received a positive opinion from the Joint Supervisory Body of Eurojust concerning the provisions on data protection.

Eurojust welcomes the Council's approval of this Agreement on Cooperation between Eurojust and Montenegro to enable Eurojust, as well as the Member States, to benefit from cooperation with Montenegro and to ensure and enhance the safety of all EU citizens.

Yours faithfully,


Michèle Coninsx
President of Eurojust

Encl.

- Draft Agreement on Cooperation between Eurojust and Montenegro
- Opinion of the Joint Supervisory Body of Eurojust on the draft Agreement on Cooperation between Eurojust and Montenegro



Draft Agreement on Cooperation between Eurojust and Montenegro

Eurojust and Montenegro (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, as last amended by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust (hereinafter referred to as the 'Eurojust Decision'), and in particular Article 26a thereof;

Having regard to the opinion of the Joint Supervisory Body, as established by Article 23 of the Eurojust Decision, of 23 April 2015;

Considering the interests of both Montenegro and Eurojust in developing a close and dynamic cooperation to meet the present and future challenges posed by serious crime, particularly organised crime and terrorism;

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

Considering that Montenegro has ratified Council of Europe Convention No. 108 of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and its additional Protocol, both of which play a fundamental role in the Eurojust data protection system;

Considering the high level of protection of personal data in the European Union, particularly the processing of personal data in accordance with the Eurojust Decision, the Eurojust Rules of Procedure on Data Protection and other applicable rules; and

Respecting the fundamental rights and principles as set out in the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, 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) 'Member States' means the Member States of the European Union;
- b) 'College' means the College of Eurojust, as referred to in Article 10 of the Eurojust Decision;
- c) '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;

- d) 'Deputy' means a person who may act on behalf of or substitute the National Member, as referred to in Article 2(2) and Article 2(5) 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) 'Liaison Prosecutor to Eurojust' (hereinafter referred to as 'Liaison Prosecutor') means a public prosecutor subject to the national legislation of Montenegro as regards his or her status;
- g) 'Liaison Magistrate to Montenegro' means a magistrate posted by the College of Eurojust to Montenegro in accordance with Article 27a(1) of the Eurojust Decision;
- h) 'National Correspondent for Terrorism Matters' means one of the contact points designated by the Montenegrin authorities in accordance with Article 7 of this Agreement, responsible for handling correspondence related to terrorism matters;
- i) 'Judicial authorities' for Montenegro means courts of general jurisdiction and public prosecutors of all levels;
- j) 'Administrative Director' means the Administrative Director as referred to in Article 29 of the Eurojust Decision;
- k) 'Data Protection Officer of Eurojust' means a specially appointed member of the Eurojust staff whose tasks are defined in Article 17 of the Eurojust Decision, including, particularly, ensuring the lawfulness and compliance of the processing of personal data by Eurojust in an independent manner;
- l) 'Eurojust staff' means the staff referred to in Article 30 of the Eurojust Decision;
- m) '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;
- n) 'Personal data' means any information relating to an identified or identifiable natural person (hereinafter referred to as the 'data subject'). An identifiable person is one who can be identified, directly or indirectly, particularly 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; and
- o) 'Processing of personal data' means any operation or set of operations that 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 cooperation between Eurojust and Montenegro in combating serious crime, particularly organised crime and terrorism.

Article 3 Scope of cooperation

1. Eurojust and Montenegro shall cooperate in the fields of activity set forth in Articles 6, 7 and 27b of the Eurojust Decision and taking into account the powers granted to National Members in accordance with Articles 9a-9f of the Eurojust Decision within the competences of Eurojust as set forth in Article 4 of the Eurojust Decision.
2. If Eurojust's mandate is changed to cover fields of activity and/or competences in addition to those set forth in paragraph 1 of this article, Eurojust may, from the date when the change to Eurojust's mandate enters into force, submit to Montenegro 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 written acceptance of the proposal by Montenegro in accordance with its internal procedures.

Article 4

Competency for the execution of this Agreement

1. The Competent Authority of Montenegro for the execution of this Agreement is the State Prosecution Office.
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 cooperation as laid down in this Agreement, and in accordance with the provisions of Article 26a(2) of the Eurojust Decision, Montenegro may second a Liaison Prosecutor to Eurojust.
2. The mandate and the duration of secondment shall be determined by Montenegro.
3. The Liaison Prosecutor may be assisted by one person. When necessary, the assistant may replace him or her.
4. Montenegro shall inform Eurojust of the nature and extent of the judicial powers of the Liaison Prosecutor within its own territory to accomplish his or her tasks in accordance with the purpose of this Agreement. Montenegro 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 Montenegro in the same way as stipulated by Montenegrin legislation in the case of a prosecutor or person of equivalent competence.
6. The Liaison Prosecutor may contact the competent authorities of Montenegro directly.
7. Eurojust shall endeavour to provide sufficient facilities to the Liaison Prosecutor, which shall include the use of office space and telecommunications services, to the extent possible within the constraints of the infrastructure and budget of Eurojust. Eurojust may request reimbursement of any or all expenses incurred by Eurojust in providing these facilities. However, no reimbursement will be requested in the event Eurojust posts a Liaison Magistrate and the same facilities are provided to him or her. All details about the provision of the facilities and reimbursement of expenses shall be agreed between the Competent Authority of Montenegro and Eurojust before the detachment of the Liaison Prosecutor to Eurojust.
8. The working documents of the Liaison Prosecutor shall be held inviolable by Eurojust.

Article 6

Eurojust Liaison Magistrate

For the purpose of facilitating judicial cooperation with Montenegro in cases in which Eurojust provides assistance and in accordance with the provisions of Article 27a(1) of the Eurojust Decision, the Parties may decide the posting of a Eurojust Liaison Magistrate to Montenegro. However, Eurojust may only enter into negotiations on the posting of a Eurojust Liaison Magistrate to Montenegro after it has received the approval of the Council of the European Union for such posting.

Article 7

Contact point to Eurojust

1. Montenegro shall put in place or appoint at least one contact point to Eurojust within the office of the Competent Authority of Montenegro. This appointment shall be duly notified to Eurojust by official letter.
2. Montenegro shall designate one of its contact points as Montenegrin National Correspondent for Terrorism Matters.

Article 8

Operational and strategic meetings

1. The Liaison Prosecutor, his or her assistant, and representatives of other competent authorities of Montenegro, 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, their deputies and assistants, the Administrative Director and Eurojust staff may also attend meetings organised by the Liaison Prosecutor or other competent authorities of Montenegro, including the contact point to Eurojust.

Article 9

Exchange of information

1. In accordance with this Agreement, the Parties may exchange all information that is adequate, relevant and not excessive to achieve the purpose of this Agreement as laid down in Article 2 thereof.
2. The requesting Party shall notify the other Party of the purpose for which the information is requested. In the event 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, which shall be respected by the other Party. 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 keep a record of the transmission and receipt of data communicated under this Agreement, including the grounds for such transmissions.

Article 10

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) if Eurojust has posted a Liaison Magistrate to Montenegro, between the Eurojust Liaison Magistrate and any competent authority of Montenegro; or

- c) directly between the judicial authority in charge of investigating and/or prosecuting and/or carrying out the criminal proceedings and the National Members concerned or the College. In this event, the Liaison Prosecutor or, if applicable, the Eurojust Liaison Magistrate, 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 their respective representatives are authorised to exchange information at the appropriate level and are adequately screened.

Article 11 **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 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 9(2) of this Agreement;
 - 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 12 **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, particularly appropriate technical and organisational security measures, to comply with the special sensitivity of the categories of personal data mentioned in paragraph 1 of this article.

Article 13 **Right of access to personal data**

1. The data subject is entitled to have access to his/her 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, prosecutions and criminal proceedings conducted by the competent authorities in Montenegro or by the competent authorities in the Member States that Eurojust is assisting; or

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- 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 of this article.
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 14

Right of correction, blockage and deletion of personal data

1. The data subject shall be entitled to request to the Party that has processed data relating to him/her under this Agreement to correct, block or delete those data that are incorrect or incomplete or if their collection, further processing or storage contravenes this Agreement or the respective rules applicable to the Parties. Such request shall be made in writing and shall include all relevant information to substantiate it.
2. If 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. If 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 15

Time limits for the storage of personal data

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

Article 16

Data security

The Parties ensure that the necessary technical and organisational measures 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 particularly ensure that only those authorised to access personal data can have access to such data.

Article 17

Onward transfers

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 appropriate safeguards regarding the protection of personal data.

Article 18

Liability

1. Montenegro shall be liable, in accordance with its national legislation, for any damage caused to an individual as a result of legal or factual errors in data exchanged with Eurojust. Montenegro shall not claim that Eurojust had transmitted inaccurate data 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 of this article, unless the data were used in breach of this Agreement. The provisions of this paragraph shall also apply in cases in which 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 in which 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 Montenegro's failure to comply with its obligations under this Agreement, Montenegro shall be bound to repay on request the amounts that 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 of this article to the extent that the compensation for damages was enforced as punitive, increased or other non-compensatory damages.

Article 19

Regular consultations

1. The Parties shall hold, at least once per year, regular exchanges of views with regard to 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 Montenegro will report to each other at least once per year on the state of implementation of the data protection provisions of this Agreement.
3. When necessary, issues identified by the Parties in the context of these data protection consultations will be reported to the appropriate oversight mechanisms and to the Joint Supervisory Body of Eurojust in particular.

Article 20

Monitoring of the implementation

1. For the purpose of monitoring the implementation of this Agreement, the Parties shall carry out a joint annual review of its implementation.
2. Any possible issues identified by the Parties in the context of these joint reviews shall be jointly addressed by the Parties in accordance with Article 23 of this Agreement.

Article 21

Oversight of implementation

The execution and implementation of this Agreement by the Parties shall be subject to oversight in accordance with their applicable legislation 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 22 Expenses

Without prejudice to Article 5(7) of this Agreement, 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 23 Settlement of disputes

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

Article 24 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 25 Termination of this Agreement

1. This Agreement may be terminated by each Party with 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 Parties is entitled to request deleting the information that 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 Montenegro to the European Union.

Article 26 Entry into force

As soon as the Parties have complied with their legal requirements, they shall notify each other in writing through diplomatic channels 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 atthis day of two thousand and (...) in duplicate in the Montenegrin and English languages, both texts being equally authentic.

In case of discrepancy, the English text shall prevail.

For Montenegro

For Eurojust

Minister of Justice

President of the College

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Opinion of the Joint Supervisory Body of Eurojust on the draft cooperation agreement between Eurojust and Montenegro

At the meeting on the 23rd of April 2015, the Joint Supervisory Body considered the draft cooperation agreement between Eurojust and Montenegro in order to give its opinion in accordance with Article 26a (2) of the Eurojust Decision.

The Joint Supervisory Body appreciates the fact that Eurojust, through its external relations team and the Data Protection Service, has provided it with extensive information through the process of discussions in preparation of a possible start of negotiations for a cooperation agreement and is pleased to observe that the level of protection in Montenegro, as a result of the substantial preparatory work done by both parties, has been assessed as satisfactory by the Data Protection Officer.

After careful deliberation and discussion, the Joint Supervisory Body concluded as follows:

Considering that Montenegro has ratified the Convention 108 of the Council of Europe on the 6 September 2005,

Considering that Montenegro has ratified the Additional Protocol to the Council of Europe Convention 108 on 3 March 2010,

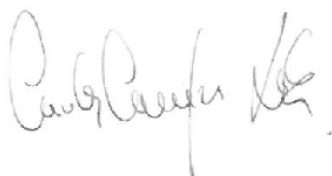
Considering the fact that the data protection legislation applicable in Montenegro has been substantially modified and that the comments and suggestions made by Eurojust in order to ensure an adequate level of protection have been taken on board to the satisfaction of the Data Protection Officer of Eurojust,

Considering the substantial work done by the Montenegrin authorities in cooperation with Eurojust to raise awareness regarding data protection issues with local judges and prosecutors in Montenegro and the high level of effort and commitment shown by those authorities in this context,

Considering that the draft agreement contains all relevant data protection provisions in line with the model agreement positively evaluated by the Joint Supervisory Body in previous occasions,

The Joint Supervisory Body considers the provisions on the exchange of personal data contained in the draft cooperation agreement between Eurojust and Montenegro adequate and gives therefore a positive opinion on the draft agreement.

Done at The Hague,
23 April 2015



Carlos Campos Lobo
Chair of the Joint Supervisory Body

