



**2015/0811(CNS)**

27.10.2015

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## **DRAFT REPORT**

on the draft Council implementing decision approving the conclusion by Eurojust of the Memorandum of Understanding between the Office for Harmonisation in the Internal Market and Eurojust (11595/2015 – C8-0303/2015 – 2015/0811(CNS))

Committee on Legal Affairs

Rapporteur: Kostas Chrysogonos

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council implementing decision approving the conclusion by Eurojust of the Memorandum of Understanding between the Office for Harmonisation in the Internal Market and Eurojust  
(11595/2015 – C8-0303/2015 – 2015/0811(CNS))**

### **(Consultation)**

*The European Parliament,*

- having regard to the Council draft (11595/2015),
  - having regard to Article 39(1) of the Treaty on European Union, as amended by the Treaty of Amsterdam, and Article 9 of Protocol (No 36) on transitional provisions, pursuant to which the Council consulted Parliament (C8-0303/2015),
  - having regard to Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime<sup>1</sup>, and in particular Article 26(2) thereof,
  - having regard to the judgments of the Court of Justice of the European Union of 16 April 2015<sup>2</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A8-0000/2015),
1. Approves the Council draft;
  2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  3. Asks the Council to consult Parliament again if it intends to substantially amend the text approved by Parliament;
  4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ L 63, 6.3.2002, p. 1.

<sup>2</sup> Judgments in Joined Cases C-317/13 and C-679/13, *Parliament v Council*, EU:C:2015:223, and in Case C-540/13, *Parliament v Council*, EU:C:2015:224.

## EXPLANATORY STATEMENT

The draft implementing decision in question formalises the conclusion by Eurojust of the Memorandum of Understanding between the Office for Harmonisation in the Internal Market (OHIM), for which the Committee on Legal Affairs is responsible under Annex VI to Parliament's Rules of Procedure, and Eurojust.

The purpose of the Memorandum of Understanding (MoU) is to foster cooperation between Eurojust and OHIM in compliance with their respective mandates.

A provision which is particularly worthy of attention is Article 3(5) of the MoU, whereby "*[e]xchange of information or experience provided for in this MoU shall not include the transmission of operational information including data relating to an identified or identifiable person*". This clarification was positively welcomed by the Joint Supervisory Body of Eurojust. The Rapporteur fully endorses this approach and calls on the Council to be vigilant of the implementation in practice of the data protection guarantee enshrined in Article 3(5) of the MoU.

Another interesting provision is Article 6 on settlement of disputes. Pursuant to paragraph 1 thereof, disputes related to the interpretation or application of the MoU must be settled "*by means of consultations and negotiations between representatives*" of Eurojust and OHIM, thus excluding the arbitration of any third party. This is in line with most of the other agreements of this kind<sup>1</sup>.

In turn, paragraph 2 of the same provision lays down that in the event of serious failing to comply with the provisions of the MoU, or if Eurojust or OHIM is of the view that such failing may occur in the near future, either of them may suspend the application of the MoU temporarily, pending the consultations and negotiations referred to in paragraph 1. This suspension clause is unusual compared with other agreements concluded by Eurojust.

However, it appears that Eurojust and OHIM agreed to conclude the MoU because, in the words of Recital 6 thereof, they were "*willing and ready to develop strategic cooperation that could help them to achieve their respective objectives*". It can be inferred that Eurojust and OHIM acknowledge that the terms of the MoU, including Article 6 thereof, contribute to a better performance of their tasks. It follows that, as it stands, the MoU is in the common interest of Eurojust and OHIM and should be approved as such by the Council.

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<sup>1</sup> See for instance Article 9 of the Memorandum of Understanding on cooperation between the European Union Agency for Fundamental Rights (FRA) and Eurojust, Article 9 of the Memorandum of Understanding on cooperation between Frontex and Eurojust, and Article 7 of Memorandum of Understanding on cooperation between Eurojust and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). An exception is to be found in Article 21 of the Agreement between Eurojust and Europol where the arbitration of an *ad hoc* Committee is foreseen.