



Cross-border transfer of electronic evidence and protection of personal data in judicial international cooperation in criminal matters in the Euro-Mediterranean Area

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Five legal grounds available to transfer operational personal data from Eurojust to third states

- ▶ Co-operation agreements (I)
- ▶ International agreements (II)
- ▶ Adequacy decisions (III)
- ▶ Appropriate safeguards and derogations (IV)

I-Co-operation agreements

- ▶ Has Eurojust concluded a co-operation agreement which includes the exchange of operational personal data with the relevant third state before 12 December 2019 when the Eurojust regulation and regulation 1725 both started applying (Article 56(2)(b) of the Eurojust regulation)?
- ▶ Eurojust no longer has the power and authority to sign co-operation agreements with third states.
- ▶ Eurojust signed **co-operation agreements which include the exchange of personal data with 12 third States:**

Twelve co-operation agreements between Eurojust and third states

- ▶ Norway (2005): liaison prosecutor
- ▶ Iceland (2005)
- ▶ U.S. (2006): liaison prosecutor
- ▶ North Macedonia (2008): liaison prosecutor
- ▶ Switzerland (2008): liaison prosecutor
- ▶ Liechtenstein (2013)
- ▶ Moldova (2014),
- ▶ Montenegro (2016): liaison prosecutor
- ▶ Ukraine (2016): liaison prosecutor
- ▶ Albania (2018)
- ▶ Georgia (2019): liaison prosecutor
- ▶ Serbia (2019): liaison prosecutor

II-International agreements 1

- ▶ Article 56(2)(c) of the Eurojust regulation: international agreement concluded between the EU and the third state pursuant to Article 218 of the Treaty on the Functioning of the EU (TFEU) which provides for adequate safeguards on the protection of privacy and fundamental rights and freedoms of individuals.
- ▶ On 14 January 2021, Council issued revised draft decision 5009/21 precisely based on Article 218 of the TFEU authorising the opening of negotiations for agreements between the EU and thirteen third states, *i.e.* **Algeria**, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Colombia, **Egypt**, **Israel**, **Jordan**, **Lebanon**, **Morocco**, **Tunisia** and Turkey on co-operation between Eurojust and the competent authorities for judicial co-operation in criminal matters of those third states: draft list of third states includes **seven of the nine EuroMed countries**.

II-International agreements 2

- ▶ Council must request the **consent of Parliament** to the conclusion of the agreement: **required** pursuant to Article 218(6)(a)(v) of the TFEU
- ▶ A member state, Parliament, Council or the Commission **may** request the opinion of the Court of Justice: Article 218(11) of the TFEU
- ▶ The opinion of the Court of Justice is then an **assent**: legally binding.
- ▶ **Plurality of actors** involved.

III-Adequacy decision 1

Where no co-operation agreement is in force with the relevant third state, has the Commission decided in accordance with Article 36 of the law enforcement directive that the third country, a territory or one or more specified sectors within that third country ensures an adequate level of protection (Article 56(2)(a) of the Eurojust regulation)?

III-Adequacy decision 2

- ▶ An adequacy decision requires the Commission to make a **positive assessment** finding an adequate level of data protection in the relevant third state.
- ▶ This standard means in practice that the level of protection must be **essentially equivalent** to the one ensured in the EU.

III-Adequacy decision 3

- ▶ **Unilateral decisions of the Commission:** adequacy decisions are the responsibility of the Commission only (Articles 56(2)(a) and 57 of the Eurojust regulation, Article 36 of the law enforcement directive). Adequacy decisions do not require the consent of Parliament unlike the conclusion of an international agreement.
- ▶ In practice, the Commission has not yet decided that any third country ensures an adequate level of protection in accordance with Article 36 of the law enforcement directive since it entered into force in 2016.

IV-Appropriate safeguards and derogations

- ▶ Where no co-operation agreement and no adequacy decision is available with the relevant third state, transfers subject to **appropriate safeguards** (Article 58 of the Eurojust regulation).
- ▶ Where no co-operation agreement, no adequacy decision or no appropriate safeguards are available with a third state, transfers pursuant to **derogations** for specific situations only (Article 59(1) of the Eurojust regulation): derogations should be interpreted restrictively and be limited to operational personal data which is strictly necessary. Derogations should not allow frequent, massive and structural transfers of operational personal data, or large-scale transfers of such data (recital 52 of the Eurojust regulation).

Situation of EuroMed countries

- ▶ Council of Europe **Convention 108** and **additional protocol** thereto: stepping stones for third states
- ▶ Both in force in **Tunisia** since 1 November 2017 and **Morocco** since 1 September 2019.

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