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## **Privacy Next's Response to the EU Consultation on Cross-border judicial cooperation – revision of Eurojust Regulation (impact assessment)**

### **Key Points:**

- The ability of Eurojust to engage in effective international cooperation for fighting cross-border crime is seriously constrained by the lack of adequacy decisions under the Law Enforcement Directive (LED).
- The absence of new adequacy decisions in law enforcement stems from structural problems in the LED itself, as the Directive largely mirrors GDPR, importing standards designed for consumer data protection into law enforcement, without sufficiently recognising the distinct context.
- A more contextual and risk-based approach to data protection in law enforcement is needed, where rights safeguards within third countries' criminal justice frameworks are recognised rather than relying on the existence of GDPR-like rules.
- The contextual approach would make adequacy decisions in law enforcement more achievable and significantly improve international cooperation mechanisms under the Eurojust Regulation.

### **Summary**

In preparation for a revision of the Eurojust Regulation, the Commission undertook a call for evidence and public consultation to gather a diverse range of views on how the EU can improve Eurojust's ability to address serious cross-border crime. The initiative for a revision of the Eurojust Regulation aims to enhance security by increasing Eurojust's support to national authorities in combating serious and organised crime, which is expected to reduce economic harm, promote stability, and foster growth in the EU. Strengthened efforts against crimes such as drug trafficking, human trafficking, and cybercrime are anticipated to yield social benefits, including improved public safety,

health, and online security. Additionally, the initiative seeks to bolster fundamental rights by ensuring citizen security, improving victims' access to justice, and safeguarding suspects' rights. While enhanced information exchange is essential for addressing cross-border crime, the impact on personal data protection must be recognised and appropriate safeguards must be in place. The revision of the Eurojust Regulation seeks to provide Eurojust with a framework to respond faster and more effectively to organised crime and further enhance the security of society.

The text below contains the primary arguments made in Privacy Next's response to the consultation.

### *The Need for More Adequacy Decisions under the LED*

The 2025 evaluation of the Eurojust Regulation clearly points to the fact that international cooperation by Eurojust is hampered by a lack of 1) adequacy decisions under Article 57 and 2) legally binding international cooperation agreements under Article 58(1)(a). These two provisions are the primary mechanisms under which Eurojust can exchange personal data with non-EU countries and are vital to the performance of Eurojust's functions in cross-border criminal justice cooperation.

In relation to adequacy decisions under the Law Enforcement Directive (LED), only the UK is deemed by the Commission to be an adequate third country. The UK is a special case because of its previous status as an EU Member State, under which it had already applied the LED. However, in the almost eight years since the LED entered into force, the Commission has not proposed any new adequacy decisions. We suggest that this is because the standards for assessing LED adequacy are improperly constructed. The LED follows the same regulatory framework as the GDPR, leading to a situation where obligations and standards designed for a consumer protection context are applied to the unique context of cross-border criminal law cooperation. In the law enforcement context, there are different risks to consider and numerous safeguards for the rights of individuals, including the protection of personal data, that are already in place.

There is sufficient evidence that the LED inappropriately mirrors GDPR across a range of safeguards and protections and does not take into account the many safeguards for the protection of personal data which already exist in EU and/or national procedural criminal law. Examples include provisions on data transfers, data security, logging, data quality and relevance, as well as some transparency and accountability requirements. This creates substantial obstacles to international law enforcement cooperation.

Most third countries do not have the specific data protection provisions that the LED contains. However, this does not mean that such third countries have insufficient criminal justice systems for providing safeguards in the transfer of personal data. For data transfers under the LED, a more context-driven approach is needed. This approach would take into account existing safeguards and protections in the criminal justice system of a third country. Focusing more on a risk-based approach, suitable to the context of law enforcement, and assessing safeguards to data protection through the existing criminal justice system, would make adequacy decisions more achievable, in turn facilitating cooperation efforts to address transnational crime.

Adopting a criminal justice context-driven approach to the LED would also positively impact other information exchange mechanisms under the Eurojust Regulation. For instance, Eurojust would find it easier to establish the standard of essential equivalence in self-assessments conducted under Article 58(1)(b) of the Eurojust Regulation if the assessment criteria were better aligned with existing procedural and constitutional safeguards within the international criminal justice system. While data protection in law enforcement is crucial, it is important to remember that law enforcement differs from consumer matters, and effective data protection frameworks must be tailored to the specific contexts in which they operate.

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