



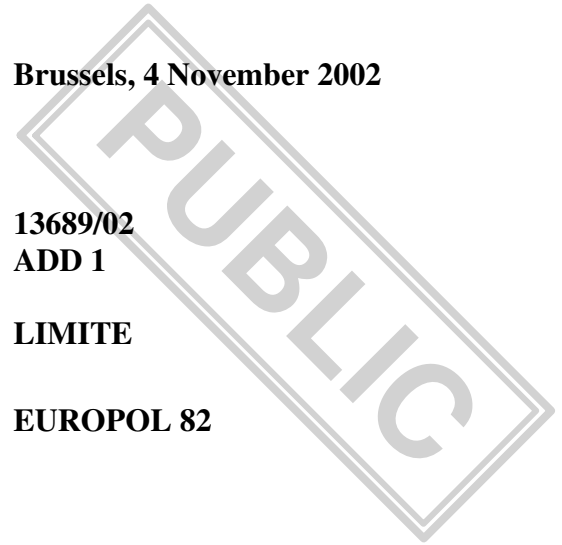
**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 4 November 2002

**13689/02
ADD 1**

LIMITE

EUROPOL 82



ADDENDUM TO THE NOTE

from : Europol

to : Article 36 Committee / COREPER / Council

No. prev. doc. : 13689/02 EUROPOL 82

Subject : JSB opinion in respect to the draft supplemental agreement between the United States of America and the European Police Office on the exchange of personal data and related information

Please find enclosed the opinion of the Europol Joint Supervisory Body in respect to the draft supplemental agreement between the United States of America and the European Police Office on the exchange of personal data and related information.

**THE JOINT SUPERVISORY BODY
OF EUROPOL**

**Opinion of the JSB in respect to the draft agreement
to be signed between Europol and the United States of America**

To the attention of:

The Chairman of the

Europol Management Board &

The Director of Europol

The Hague

The Netherlands

DOCUMENT 02/65

THE JOINT SUPERVISORY BODY OF EUROPOL,

A. Introductory remarks

1. The JSB has been called upon to draw up an opinion in respect to the draft agreement to be signed between Europol and the United States of America contained in a document dated 27 September 2002 as submitted by Europol and attached hereto.

2. Article 3, paragraph 3, of the Rules governing the transmission of personal data to third States and third bodies and Article 2, paragraph 4, of the Rules concerning the receipt of information by Europol from third parties explicitly recognise that the JSB must give an opinion during the procedure in which the Council of the European Union has to decide whether to approve any agreement negotiated between Europol and third States such as the United States of America.

3. The JSB points out that the present opinion is based on general knowledge of practice in relation to the protection of personal data in the United States of America and the presentations made during the negotiations.

4. The JSB recognises the imperative of improved cooperation between the United States of America and Europol in the ongoing fight against serious crime, particularly in view of the heightened concerns that exist in the current circumstances.

Accordingly, the JSB underlines that its present opinion only relates to the draft agreement of 27 September 2002 between Europol and the United States of America. The positions taken by the JSB in no way bind the JSB when drawing up its opinion in respect to draft agreements to be concluded between Europol and other third States.

B. JSB Opinion in respect to the draft agreement between Europol and the United States of America

The JSB welcomes the fact that significant progress has been made during the course of the negotiations between Europol and the United States of America. The present draft agreement represents a joint effort to balance the need to fight serious crime with the rights of the individual, taking into account the different legal and administrative structures of both Parties. The JSB is of the opinion that in respect to the draft agreement the Council is now in the position to allow the Director of Europol to conclude the agreement.

This opinion is subject to the following considerations, which ought to be fully addressed in the exchange of letters and submitted to the JSB for further consideration.

- i) Europol will give a commitment that it will not consent to the use of personal data for purposes outside the objective of Europol (Article 5(1,a) of the draft Agreement).
- ii) The interpretation of Article 5(1a) is to be clarified to ensure conformity with the relevant provisions of the Europol Convention..
- iii) Europol shall not consent in any case to the onward transmission of data by the United States of America of data transmitted by Europol (Article 7(3)).

- iv) Europol shall always request the consent of the Member State that has transmitted the data to Europol before deciding to communicate data to the United States of America, in accordance with Article 18(4) of the Europol Convention (Article 5(4) of the draft Agreement)
- v) The United States of America shall clarify the practicalities of implementing Article 12 of the draft Agreement.

The JSB considers the above mentioned commitments and declarations, as also summarised in a list attached to the draft agreement, as binding upon the Parties in the implementation of this agreement.

C. Closing remarks

The JSB stresses the need to monitor the implementation of the agreement in view of the law and regulation in the United States of America in relation to the protection of personal data.

In particular the JSB invites Europol to institute a process to ensure the timely review of the provisions of the agreement.

The JSB also underlines the importance of compliance with the principles of purpose finality (Article 5(1), sensitive data (Article 6), transmission only to competent Federal, State and local authorities (Article 7(1)), deletion of data (Article 9 (3)) and independent supervision (Article 12), and requests to be provided with all information regarding to the implementation of this agreement and to be involved in the consultation procedure as mentioned in Article 13.

Done at Brussels

3 October 2002

Alex TÜRK

Chairman of the Joint Supervisory Body of Europol
