



**COUNCIL OF
THE EUROPEAN UNION**

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EUROJUST 73

NOTE

From: Joint Supervisory Body of Eurojust
To: Article 36 Committee/COREPER/Council

Subject : Activity Report of the Joint Supervisory Body of Eurojust for the year 2007

1. Article 23(12) of the Council Decision of 28 February 2002 setting up Eurojust reads "The Joint Supervisory Body shall submit an annual report to the Council".
2. In the Annex please find the Activity Report of the Joint Supervisory Body of Eurojust for the year 2007.
3. The Article 36 Committee is asked to request COREPER to invite Council to take note of the report set out in the Annex and forward it to the European Parliament for information in accordance with Article 32(2) of the Council Decision setting up Eurojust.

Activity Report 2007

Joint Supervisory Body of Eurojust

P.O. Box 16183
2500 BD The Hague
The Netherlands
Tel: +31 70 412 5512
Fax: +31 70 412 5515
E.mail: jsb@eurojust.europa.eu
www.eurojust.europa.eu

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FOREWORD

As the current chair of the Joint Supervisory Body of Eurojust (JSB) I have been a troika member throughout the year 2007. This possibly qualifies me to give a few introductory words to the 2007 report.

First, I should note the commendable work of the Eurojust Data Protection Officer and the Secretariat of the JSB and the very good cooperation the troika had with them. The troika meets four or five times a year and a thorough supply of information from the Data Protection Officer is crucial for its work. Also, due to the Secretariat, the work of the JSB in 2007 was organised very efficiently.

Second, although the qualifications of the national appointees to the JSB are excellent and the threesome composition of the JSB is efficient, the semi-annual change of its composition does not lead to adequate continuity of its work. I am, therefore, glad that already in 2007 ideas on making the composition of the JSB more permanent have appeared, which have later led to the preparation of adequate amendments in the scope of the procedure of amending the Eurojust Decision. Also, in this scope, the need to increase the number of personal data Eurojust can process and to make the Decision more flexible in this respect has been identified by the JSB in 2007.

In 2007 the most important task of the JSB has been the inspection, carried out in November of that year. The inspection team undertook a thorough survey of personal data processing in Eurojust and of data security procedures, both from a legal and technical point of view. The inspection was organised and carried out efficiently without hindering Eurojust operations.

Last, let me note that although the caseload of Eurojust is increasing rapidly, the appeals to the JSB are practically non-existent. There was one appeal in 2006, decided in 2007, and no new appeal in 2007. The decision taken by the JSB in 2007 was very important and changed the practice of informing personal data subjects on processing their personal data. I am sure that to a certain extent this lack of appeals may be attributed to the correct work of Eurojust, but still, if this lack persists, the JSB should consider the reasons for it in more detail.

Rajko Pirnat
Chair of the Joint Supervisory Body January – June 2008
30 June 2008

INTRODUCTION

The Joint Supervisory Body of Eurojust (hereinafter 'JSB') is an independent body created by virtue of Article 23 of the Eurojust Decision¹ to monitor collectively the Eurojust activities referred to in Articles 14 to 22 in order to ensure that the processing of personal data is carried out in accordance with this Decision. In order to fulfil these tasks, the JSB shall be entitled to have full access to all files where such personal data are processed.

The JSB is composed of three permanent members and, as provided for in Article 23.4, ad hoc judges. In order to set up the JSB, each Member State, acting in accordance with its legal system, shall appoint a judge who is not a member of Eurojust, or, if its constitutional or national system so requires a person holding an office giving him sufficient independence, for inclusion on the list of judges who may sit on the JSB as members or ad hoc judges.

In accordance with Article 23.12 of the Eurojust Decision, the JSB shall submit an annual report to the Council.



Members of the Joint Supervisory Body at the plenary meeting in April 2007, accompanied by the Data Protection Officer and the Assistant to the Data Protection Officer (right)

¹ Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA) OJ L 63 of 06.03.02 p.1

1. ADMINISTRATIVE MATTERS

PERMANENT MEMBERS ('TROIKA')

During the first six months of 2007, Mr Tolksdorf (Chair, Germany), Mr Campos Lobo (Portugal) and Mr Pirnat (Slovenia) were members of the troika and during the second half Mr Campos Lobo (Chair, Portugal), Mr Pirnat and Mr Gasse (France).

APPOINTEES

Following the enlargement of the European Union, at the end of the year there were 27 official appointees in total. The JSB was pleased to welcome Ms Pavlina Panova, who was appointed as the national representative for Bulgaria on 4 July, and Ms Laura Marina Andrei for Romania on 1 October.

Mr Ulco van de Pol, appointee for the Netherlands and one of the first chairmen of the JSB, was replaced by Ms Jannette Beuving and Mr José Luis Piñar Mañas, appointee for Spain, was replaced by Mr Artemi Rallo Lombarte.

MEETINGS AND VISITS TO EUROJUST

The members of the troika met on four occasions during the year (8 March, 26 April, 19 July and 15 November). The plenary meeting of all the appointees took place on 26 April.

Mr Peter Hustinx, European Data Protection Supervisor, was invited as a guest speaker to the plenary meeting and provided an interesting overview of recent developments in EU data protection.

The JSB members took part in two study visits to Eurojust on 29-30 January and 4 October in order to have the opportunity to meet various members of the College and administration of Eurojust and have a closer look at the various data processing activities. Following these visits, it was decided that these study visits should be continued, as they provided a useful occasion for the members to learn more about Eurojust and its data processing activities.

On 26 September Mr Campos Lobo attended, on behalf of the JSB, the farewell event organised by Eurojust for the retirement of Mr Roelof-Jan Manschot, Vice-President of Eurojust and National Member for the Netherlands.

ADMINISTRATION

A total budget of €58,426 was allocated to the JSB, of which €43,746 was spent.

As part of Eurojust's future administrative planning, the JSB secretariat prepared work programmes for the JSB for 2008 and 2009 which were adopted by the members. These work programmes aimed to set out objectives with related activities and financial resources needed to reach these aims.

A new mission guide for the National Members and Members of the Joint Supervisory Body, based on that of the European Commission, was presented by the Administrative Director to the members at their meeting in July.

2. SUPERVISORY TASKS

EXCHANGE OF VIEWS WITH THE DATA PROTECTION OFFICER OF EUROJUST

At every meeting the JSB had the occasion to exchange views with Ms Diana Alonso Blas, Data Protection Officer (hereinafter 'DPO'), who thoroughly informed the members of all ongoing matters and of the issues which might require their attention during the following period.

ANNUAL SURVEY CARRIED OUT BY THE DATA PROTECTION OFFICER

In accordance with Article 27 of the Rules of Procedure on the Processing and Protection of Personal Data at Eurojust¹, Ms Diana Alonso Blas conducted the second annual data protection survey at Eurojust in July 2007. She interviewed the national desks of Estonia, Ireland, France, Lithuania and Finland and presented the findings of her survey to the JSB at its meetings in July and November.

The JSB agreed that the survey had been carried out in accordance with Article 27 of the Rules of Procedure on the Processing and Protection of Personal Data at Eurojust and that its general conclusions were in line with the findings of the previous inspection carried out by the JSB in November 2005. The report provided by the DPO was considered a very useful tool for the inspection team and the JSB in general.

INSPECTION

In accordance with Article 23.1 of the Eurojust Decision and Article 6 of the Act of the Joint Supervisory Body of Eurojust², an inspection was carried out at Eurojust from 26 to 29 November. The inspection team was headed by Mr Carlos Campos Lobo (JSB member for Portugal) and was composed of leading legal and technical experts in the field of data protection: Mr Peter Michael (Data Protection Secretary, Council of European Union), Ms Kostoula Kampouraki (Assistant at the Data Protection Secretariat, Council of European Union), Mr Fernando Silva (Portuguese Data Protection Authority), Ms Miroslava Matousava (Czech Republic Data Protection Authority) and Ms Tonnie Gräve (Dutch Data Protection Authority).

¹ Rules of Procedure on the Processing and Protection of Personal Data at Eurojust (text adopted unanimously by the college of Eurojust during the meeting of 21 October 2004 and approved by the Council on 24 February 2005 (2005/C 68/01) OJ C 68 19.03.05 p.1

² Act of the Joint Supervisory Body of Eurojust of 2 March 2004 laying down its rules of procedure (2004/c 86/01) OJ C 86 of 06.04.04 p.1

The inspection team followed up the topics covered in the inspection which took place in 2005 and addressed an extensive number of legal and technical issues with several national desks and members of the Eurojust administration.

The final report with recommendations is expected to be addressed to Eurojust at the beginning of 2008.

3. MATTERS DEALT WITH IN 2007

RULES OF PROCEDURE

In accordance with Article 31¹ of the Act of the Joint Supervisory Body an evaluation of the rules of procedure took place at the plenary meeting in April. On the initiative of Mr Tolksdorf, a discussion with all the appointees took place and it was confirmed that they did not see any need to make any changes to the rules for the time being and they agreed to maintain the current rules of procedure.

THIRD COUNTRY AGREEMENTS

The JSB submitted a positive opinion on the draft agreement between the Republic of Croatia and Eurojust to the College of Eurojust on 19 July (Annex II). This agreement was subsequently approved by the Council of Ministers of Justice and Home Affairs on 9 November. So far the agreement has not entered into force, awaiting all legislative and organisational measures that need to be taken in the Republic of Croatia to comply with the agreement.

The JSB also submitted a positive opinion on the draft accord between Eurojust and the Office Européen de Lutte Anti-Fraude (OLAF) to the College of Eurojust on 10 May (Annex III). The discussions on that agreement have continued in 2008.

The JSB were kept informed of ongoing negotiations with other third countries during the year through the DPO and the External Relations team of Eurojust.

POSSIBLE AMENDMENTS OF THE EUROJUST DECISION

Discussions took place at the JSB meetings on how to deal with the issue raised in a recommendation of the inspection report of 2005: *"In view of the practical difficulties in complying with Article 15, Eurojust should consider what further steps it can take to either ensure compliance or seek to have the Article amended to provide greater flexibility"*. At the troika meeting in April, it was agreed to include this point in the scope of the forthcoming inspection.

¹ "These rules of procedure shall be evaluated by the Joint Supervisory Body between one and three years after their entry into force, and in the light of experience".

The JSB followed with great interest the ongoing discussions regarding the review of the Eurojust Decision and hoped that greater flexibility was introduced in the text of this Article in order to ensure that Eurojust may legally process all data necessary to perform its tasks, not only on the basis of the Eurojust Decision but also in the context of the Council Framework Decision on the European Arrest Warrant (EAW)¹ and the Council Decision of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences².

DRAFT FRAMEWORK DECISION ON DATA PROTECTION IN THE THIRD PILLAR

The JSB followed with interest the developments regarding the envisaged draft framework decision on data protection in the third pillar³, which was discussed during the German and Portuguese presidencies.

In response to a proposal put forward during the German presidency of the European Union to merge the Joint Supervisory Bodies of the third pillar (Schengen Information System, Europol, Eurojust and the Customs Information System) into a single data protection supervisory body, Eurojust defended the keeping of the current structure of the JSB of Eurojust in a letter to the Federal Ministry of Justice in Berlin of 7 March.

At a meeting of the Permanent Representatives Committee (COREPER) in October in Brussels, an approach was agreed which transformed the proposed merger into a mere mandate for examination included in a Council declaration as to how the bodies could be merged.

EUROJUST SECURITY RULES

The JSB was kept informed by Eurojust on the state of play of the implementation of the security rules at Eurojust, which had been officially adopted by the College of Eurojust in March 2007.

A risk assessment framework was presented to the JSB at its meeting in November which explained the practices and measures being adopted to tackle security risks at Eurojust.

The JSB took note of both developments with satisfaction.

¹ Council framework decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), OJ L 190/1, 18.7.2002.

² Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, OJ L 253/22, 29.9.2005.

³ Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (Interinstitutional File 2005/02/02 (CNS), Article 18

SECURE COMMUNICATIONS

The JSB was kept informed regularly by Eurojust on the progress of the technical implementation of a dedicated secure communication facility between Eurojust and Europol and a pilot project with the Slovak Republic, which was expected to be extended to all the 27 member states in 2008. The JSB has often underlined the need to ensure that secure communication facilities are made available to the national desks in order to ensure efficient and secure exchange of case-related information.

E-POC III PROJECT AND CASE MANAGEMENT SYSTEM

The JSB was brought up to date by Eurojust on developments in the EPOC III project (European Pool against Organised Crime), an EU co-funded project with the Ministries of Justice of Slovenia, Romania, France, Italy and Poland, CM Sistemi SpA (Italy) and Eurojust as partners. The objective of this project was to develop the EPOC software which was used at Eurojust as the Case Management System (hereinafter 'CMS'), to support the secure communication infrastructure and to implement the Eurojust Data Protection rules, including exchange of data with third parties.

The troika attended a demonstration of the CMS during its study visit in January. A further demonstration was made to all the members at their plenary meeting.

4. APPEALS

According to Article 23 of the Eurojust Decision, the JSB shall examine appeals submitted to it in accordance with Articles 19(8) and 20(2) and carry out controls in accordance with paragraph 1, first subparagraph, of this Article. If the JSB considers that a decision taken by Eurojust or the processing of data by it is not compatible with this Decision, the matter shall be referred to Eurojust, which shall accept the decision of the JSB. Decisions of the JSB shall be final and binding on Eurojust.

The JSB received its first ever appeal in October 2006. The applicant had lodged a complaint against Eurojust's reply to his/her request for access to personal data that might be held in Eurojust databases. Eurojust's reply had been worded in accordance with the text of Article 19 (7)¹ of the Eurojust Decision.

¹ "If access is denied or if no personal data concerning the applicant are processed by Eurojust, the latter shall notify the applicant that it has carried out checks, without giving any information which could reveal whether or not the applicant is known".

The JSB issued its final decision on the appeal to the College of Eurojust on 26 April: *“The JSB of Eurojust considers that in all cases where an individual seeks access to personal data concerning him or herself processed by Eurojust, including those cases where there are no data processed, the College of Eurojust shall decide whether in the specific case the disclosure of the data or of the non-existence of data concerning the application processed by Eurojust may contravene any interests of Eurojust or of one of the Member States. If this is not the case, Eurojust shall reveal to the individual the requested data or inform him that in fact there are no data concerning him”*. The appeal was referred to Eurojust for reconsideration in accordance with Article 23 (7) of the Eurojust decision.”

ANNEX I APPOINTEES TO THE JOINT SUPERVISORY BODY

Country	Member	Date of appointment
Bulgaria	Ms Pavlina PANOVA	04/07/07
Belgium	Ms Nicole LEPOIVRE	09/01/03
Czech Republic	Mr Josef RAKOVSKÝ	14/04/04
Denmark	Ms Lena ANDERSON	19/09/02
Germany	Mr Klaus TOLKSDORF	10/07/02
Estonia	Mr Pavel GONTSHAROV	25/10/04
Greece	Mr Gerasimos FOURLANOS	21/05/02
Spain	Mr Artemi RALLO LOMBARTE	27/02/07
France	Mr Didier GASSE	25/03/04
Ireland	Mr William HAWKES	06/07/05
Italy	Mr Alfonso PAPA	06/02/03
Cyprus	Mr George EROTOCRITOU	16/09/04
Latvia	Ms Zane PĒTERSONE	27/09/04
Lithuania	Mr Egidijus BIELIŪNAS	06/12/04
Luxembourg	Ms Lotty PRUSSEN	06/05/02
Hungary	Ms Edit Mária VARGA	13/12/04
Malta	Mr Paul MIFSUD CREMONA	18/10/04
Netherlands	Ms Jannette BEUVING	01/01/07
Austria	Mr Gustav MAIER	26/08/02
Poland	Mr Dariusz ŁUBOWSKI	26/05/04
Portugal	Mr Carlos CAMPOS LOBO	01/04/06
Romania	Ms Laura-Marina ANDREI	15/10/07
Slovenia	Mr Rajko PIRNAT	01/12/04
Slovakia	Mr Ladislav DUDITŠ	10/05/04
Finland	Mr Antti RUOTSALAINEN	01/10/05
Sweden	Mr Hans FRENNERED	01/07/02
United Kingdom	Mr Richard THOMAS	16/03/03

ANNEX II OPINION OF THE JOINT SUPERVISORY BODY OF EUROJUST ON THE DRAFT AGREEMENT BETWEEN EUROJUST AND THE REPUBLIC OF CROATIA

On the 5th of July 2007, the President of the College of Eurojust, Mike Kennedy, submitted the draft agreement between Eurojust and the Republic of Croatia to the Joint Supervisory Body for consideration.

In accordance with Article 27.3 of the Eurojust Decision, the Joint Supervisory Body will be consulted by Eurojust when concluding agreements with third parties which contain provisions on the exchange of personal data.

At its meeting on the 19th of July 2007 the Joint Supervisory Body had a useful exchange of views with the vice-chairman of the College team dealing with external relations and the Data Protection Officer concerning this draft agreement and was informed of all its relevant aspects as well as of the fact-finding visit of the Data Protection Officer to Croatia.

The Joint Supervisory Body appreciates the fact that Eurojust has provided it with extensive information and is pleased to observe that the level of protection in Croatia has been checked carefully by the Data Protection Officer. The JSB notes with satisfaction that the recommendations contained in the DPO report of 1 June 2007 have been taken on board in the text of the agreement. It would also like to take the opportunity to stress the importance of a second visit by the DPO to Croatia before the agreement enters into force.

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

Considering that Croatia is candidate to the accession to the European Union,

Considering the fact that the data protection legislation applicable in Croatia seems to offer adequate protection,

Considering that the Office of the Attorney General in Croatia, competent authority in the sense of Article 4 of the draft agreement, is subject to the supervision of the Croatian Data Protection Authority concerning data protection matters,

Considering the fact that additional safeguards have been included in the text of the agreement to ensure proper oversight of its implementation by the DPO and, where necessary, the JSB,

The Joint Supervisory Body considers the provisions on the exchange of personal data contained in the draft agreement between Eurojust and the republic of Croatia adequate and gives therefore a positive opinion on the draft agreement as contained in the letter of Mike Kennedy of 5 July 2007.

Done at The Hague,
19 July 2007

Carlos Campos Lobo
Chairman of the Joint Supervisory Body

ANNEX III OPINION OF THE JOINT SUPERVISORY BODY OF EUROJUST ON THE DRAFT ACCORD ON COOPERATION ARRANGEMENTS BETWEEN EUROJUST AND OLAF

On the 28th of March 2007, the President of Eurojust, Mike Kennedy, submitted the draft accord on cooperation arrangements between Eurojust and OLAF to the Joint Supervisory Body for consideration.

In accordance with Article 27.3 of the Eurojust Decision, the Joint Supervisory Body will be consulted by Eurojust when concluding agreements with third parties which contain provisions on the exchange of personal data.

The Joint Supervisory Body has stressed in the past the need for Eurojust to have a proper legal basis to exchange personal data with OLAF, which is a very important partner for Eurojust. The Joint Supervisory Body was therefore pleased to receive the draft accord and welcomes this development.

At its meeting on the 26th April 2007 the Joint Supervisory Body had a useful exchange of views with the chairman of the College team dealing with OLAF matters, the Data Protection Officer and a representative of the Eurojust Legal Service concerning this draft accord and was informed of all its relevant aspects. The Joint Supervisory Body appreciates the fact that Eurojust has provided it with extensive information through the whole negotiation process.

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

Considering the importance of OLAF as cooperation partner for Eurojust,

Considering the fact that Regulation EC 45/2001 of the European Parliament and the Council on the protection of individuals with regard to the processing of personal data by Community institutions and bodies and on the free movement of such data applies to OLAF,

Considering that OLAF is subject to the supervision of the European Data Protection Supervisor concerning data protection matters,

The Joint Supervisory Body considers the provisions on the exchange of personal data contained in the draft accord between Eurojust and OLAF adequate and gives therefore a positive opinion on the draft accord as contained in the letter of Mike Kennedy of 28 March 2007.

Done at The Hague,
26 April 2007

Dr. Klaus Tolksdorf
Chairman of the Joint Supervisory Body