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NOTE

From: Joint Supervisory Body of Eurojust
To: Coreper/Council
Subject : Activity Report of the Joint Supervisory Body of Eurojust for the year 2009

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 2009.
3. COREPER is requested 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 of the
Joint Supervisory Body of
Eurojust for 2009**

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FOREWORD

As the current chairwoman of the Joint Supervisory Body of Eurojust (JSB), it is my pleasure to present some introductory words to this 7th activity report of the JSB for the year 2009.

The present report reflects the accomplishments of the JSB under the chairmanship of Mr Josef Rakovský of the Czech Republic during the first half of the year 2009 and, since June 2009, the work of the new JSB Troika, for which the rules of procedure have changed the mandate, which is by election, from a semi-annual period to a longer period, to ensure better continuity of this body.

This is my second presidency of the JSB of Eurojust. I want to emphasize the importance of effective data protection in the field of judicial cooperation and the progress that has been achieved by Eurojust regarding data protection issues, which is certainly due to the commitment of the JSB and the outstanding work of the Data Protection Officer.

The future challenges for the JSB will be the implementation of the new Eurojust Decision and the Lisbon Treaty, which may have implications for how law enforcement agencies are supervised.

Let me also take this opportunity to very warmly thank the former and current members of the JSB Troika for their contribution to the work of the JSB, and also thank the College and staff of Eurojust for their attention. I particularly wish to thank the Data Protection Officer, Ms Diana Alonso Blas, and Ms Fiona Coninx, secretary to the JSB, for their very much appreciated assistance to the JSB.

Lotty Prussen

Chair of the JSB Eurojust

1. INTRODUCTION

This is the 7th annual report of the Joint Supervisory Body of Eurojust (hereinafter “JSB”) since it first become operational in May 2003 and outlines its main activities during 2009. The tasks of the JSB are set out in Article 23 of the Council Decision of 16 December 2008 on the strengthening of Eurojust¹. An independent body, the JSB monitors the activities of Eurojust to ensure that the processing of personal data is carried out in accordance with the Eurojust Decision. It will also hear appeals lodged by individuals dissatisfied with Eurojust’s response to their requests to exercise their rights as data subjects.

This report concludes with a look at the future, setting out some objectives for the coming years.

2. ADMINISTRATION

2.1 *Composition of JSB*

The JSB is composed of twenty-seven members appointed by each Member State, three of whom are permanent members (Annex I).

During the first half of 2009, Messrs Josef Rakovský (Chair, Czech Republic), Hans Frennered (Sweden) and Artemí Rallo Lombarte (Spain) were the permanent members. Ms Marta Aguirre Calzada represented Mr Rallo Lombarte as alternate in these meetings.

In accordance with the new rules of procedure, the first elections were held at the plenary meeting in June. Ms Lotty Prussen, as longest-serving appointee, was appointed Chair and Messrs Hans Frennered (Sweden) and Carlos Campos Lobo (Portugal) were elected permanent members. The next elections will take place at the plenary meeting in June 2010.

¹ Council Decision of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

2.2 Meetings

The JSB met in The Hague on four occasions (12 February, 7 April, 24 September and 19 November), and the plenary meeting of the appointees took place on 23 June. Minutes of each meeting were prepared by the JSB Secretariat and circulated to all the appointees. Since September, highlights have been sent to the College and administration of Eurojust, which has helped to increase the transparency of the work of the JSB and strengthen links between Eurojust and the JSB.

2.3 Budget and costs

The JSB has its own budget, which is part of the Eurojust budget. A total budget of €46,000 was allocated to the JSB, of which €41,143 was spent on administrative costs for meetings and participation in external meetings. Part of the remaining amount was transferred to another budget line of Eurojust during the latter part of the year, as it was foreseen that not all the money would be used before year's end.

3. JSB UNDER THE NEW EUROJUST DECISION

3.1 Changes in new Eurojust Decision affecting JSB

Article 23 of the new Eurojust Decision, which outlines the role and tasks of the JSB, was amended following a written proposal by the JSB, nearly all of which was incorporated into the final text except for one minor point. Whereas the JSB's written proposal included details dealing with the provisional regime for elections for the first two years, the final text wisely provided for the Rules of Procedure of the JSB to deal with such specific transitional measures. With the exception of this one legislative point, the proposal of the JSB was fully taken over in the instrument, bringing with it a fundamental change in the JSB composition.

While up to then the JSB Troika composition had been linked to the presidency of the European Union, the new Article 23 foresaw in its paragraph 3 an annual election at the plenary meeting of the JSB in which a new member would be chosen from among the appointees of the Member States for a period of three years (the length of appointment to the JSB was modified accordingly in paragraph 1 from the initial 18 months of participation in the Troika to three years). The member in the third year would chair the Troika. This new system should allow for more continuity and expertise in the JSB, as members will have more time to become acquainted with the work of Eurojust and to build expertise in that regard. Further, since individuals must present themselves as candidates and “campaign” for that purpose, those persons will be truly motivated to be part of the JSB and ready to commit time and effort to the work of the body.

A new paragraph 10 was also included in Article 23, entitling the JSB Secretariat to rely on the expertise of the Data Protection Secretariat at the Council. This paragraph, supported by the JSB in its letter to the Council, constitutes a legal basis for the so-far only informal cooperation with this secretariat, which had proved to be very useful in the past for the inspections carried out in 2005 and 2007. The introduction of this paragraph in the text will facilitate the practical arrangements around this cooperation, which until now was subject to approval by various instances linked to this secretariat.

Paragraph 2(a) of Article 27(a) provides for the supervision by the JSB of the activities of liaison magistrates posted by Eurojust to third countries, as such magistrates will be connected to the Case Management System (hereinafter “CMS”). The provision of supervision of the JSB in the text was, strictly speaking, not necessary as, being part of Eurojust, the liaison magistrates automatically fall under the Eurojust rules, including the Data Protection Rules, and therefore the Data Protection Officer (hereinafter “DPO”) and the JSB are competent. However, given the fact that such magistrates will in practice be posted abroad, it was useful to make this point completely clear.

3.2 *New Rules of Procedure of JSB*

In Recital 16 of the new Eurojust Decision, it is stated that the “Rules on the Joint Supervisory Body should facilitate its functioning”. Indeed, there was a certain urgency to review these rules, so that they could be approved at the plenary meeting, simultaneously with the holding of the first elections, to avoid a whole year passing before their application.

The Act of the JSB¹ was revised in alignment with the changes envisaged in the new Eurojust Decision. A first draft was drawn up by the permanent members and sent to all the appointees for review prior to the plenary meeting. A final version was adopted at the plenary meeting. The amended rules of procedure have since been submitted to the Council of the European Union and a request put forward for their publication in the Official Journal with translation into all the official languages. A final reply is expected from the Council.

3.3 *First elections*

The first elections took place at the plenary meeting of 23 June based on the initial written proposal submitted by the JSB to the Council of the European Union, which covered the transitional period. The initial written proposal was incorporated into the revised JSB Rules of Procedure:

- 1. In order to start working in accordance with the procedure established in Article 23(3) of the amended Eurojust Decision, the first plenary meeting of persons appointed by the Member States in accordance with Article 23(1) taking place following the entry into force of this Decision shall hold election for three members. These three members will replace the three members of the troika acting at that date.*
- 2. Appointees wishing to be elected shall present their candidacy in writing to the Secretariat of the Joint Supervisory Body ten days before the meeting in which the election is to take place. The three candidates with the highest amounts of votes during the election shall become permanent members.*

¹ Act of the Joint Supervisory Body of Eurojust of 23 June 2009 (adopted unanimously at the plenary meeting of the Joint Supervisory Body of Eurojust of 20 June 2009) “The Act of the JSB”

3. The person having the highest amount of votes shall remain member for three years and hold the chair during the third year of mandate; the person having the second highest amount of votes shall remain member for two years and shall hold the chair during the second year of mandate and the third one shall remain member for one year and hold the chair during this year.

4. After this first round of elections, elections shall be held yearly in accordance with Article 3(2) and (3) of these rules in order to replace one member yearly.

4. SUPERVISORY WORK

4.1 Data Protection Officer

In accordance with Article 6(6) of the Act of the JSB, the JSB liaised regularly with the DPO, Ms Diana Alonso Blas. She kept the JSB informed of all ongoing issues and matters at Eurojust.

The JSB was pleased to learn that the DPO held regular information sessions for Eurojust post-holders on personal data processing, outlining the rules in place and principles of general application and explaining the rights of individuals. In 2009, particular attention was paid to specific units and services of the administration to which tailor-made information sessions were offered.

In accordance with Article 27(2) of the Rules on the Processing and Protection of Personal Data at Eurojust¹, Ms Alonso Blas carried out an annual survey towards the end of 2009. The National Desks of Bulgaria, Romania, Spain, France and Slovenia were interviewed. For the second year, the DPO also interviewed an administrative unit, the Legal Service. Additionally, the CMS and security practices at Eurojust were checked. The survey confirmed an increased awareness of data protection at Eurojust and a considerable improvement in compliance with the rules, in particular regarding the review of time limits in the CMS and structured manual files since the last survey. The findings of this survey will be a helpful reference tool for the next inspection by the JSB.

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 19.3.2005 p.1.

4.2 *Implementation of the new Eurojust Decision*

In September, the JSB discussed the implementation of the new Eurojust Decision entering into force on 1 January 2010, with particular reference to Article 13, which concerns the exchange of information with Member States and between National Members. Some potential data protection issues were discussed concerning the data provided by Member States to Eurojust under this article, as the purpose of these data is different than the data so far provided to Eurojust in the context of a request for assistance or cooperation.

The JSB advised that the College of Eurojust should clearly define the output to the Member States following receipt of this new type of information and should ensure that such data were processed appropriately in the CMS.

The JSB asked to be involved in further discussions regarding implementation of Article 13 and to receive feedback from the College on this point. This issue has been included on the agenda of the first meeting of 2010.

4.3 *Recommendations of 2007 inspection*

The JSB was informed regularly of the progress of Eurojust's action plan for the implementation of the recommendations of the 2007 inspection report. The majority of the recommendations were related to policies, such as access control and an audit log, and a few related to technical non-conformities. The JSB was satisfied with the progress of the implementation and was pleased to note an improvement from the previous inspection in 2005, when not as much information had been provided about the follow-up action taken by Eurojust.

4.4 *Inspection 2009*

With the support of the Secretariat of the Council of the European Union, an inspection team was formed towards the end of 2009. Mr Carlos Campos Lobo was nominated as coordinator. Three members of the inspection team undertook a first visit, dedicated to the CMS in November in preparation for the inspection. The inspection will take place from 19 to 21 January 2010 and its scope of enquiry will include: action taken by Eurojust to implement the recommendations of the 2007 inspection; use of the CMS and its content; the log file of the Schengen Information System; interviews with National Members concerning findings in the CMS and awareness of obligations towards data subjects.

The JSB officially announced the forthcoming inspection to the President of Eurojust in December 2009.

4.5 *E-mail incident of 7 December 2007*

As reported last year, a disruption of the e-mail service at Eurojust had taken place on 7 December 2007, as a side effect of an attempt to solve a problem caused by an accident in the use of the system the previous day. This incident had been investigated by the JSB in 2008 and a report presented to Eurojust. Eurojust's final response to the JSB's evaluation of the course of events and actions was presented by the Acting Administrative Director of Eurojust, Mr Jacques Vos, at the meeting in February 2009. He outlined the measures that were being taken by Eurojust on the basis of the JSB's recommendations to restore the trust of users in the integrity and inviolability of the e-mail system. Eurojust admitted that mistakes in judgement had been made at the time and recognised the considerable operational consequences that this incident created, but it was hoped to put this issue aside, to learn from it, to follow the JSB's recommendations and to be better prepared to deal with future incidents.

It was decided to close this incident, with the recommendation that no such occurrence should happen again in the future. The JSB added in conclusion that the issue at stake in this incident had been the breach of privacy, not the disruption of the e-mail system. Additionally, it was important for users to be aware of their complete responsibility for their own messages.

4.6 *Non-case-related processing operations*

At its first meeting under the new Eurojust Decision, the JSB discussed the issue of non-case-related processing operations. The JSB stated its intention to leave no part of the data processing operations at Eurojust unsupervised and underlined that the JSB's competence covered both case-related and non-case-related processing operations. The JSB appointed Mr Carlos Campos Lobo as contact person for administrative data protection issues.

4.7 *Case Management System*

The JSB was informed of the new European Pool against Organised Crime case management system (EPOC III+), which was soon to become operational at Eurojust. The EPOC software had been used as Eurojust's CMS since October 2004, facilitating the secure storage of case-related personal data and the sharing of information amongst National Members. Moreover, the CMS was in compliance with Eurojust's data protection rules. The CMS was initially developed in the context of three EU-funded projects, EPOC I, II and III, running between 2002 and 2008. During the course of EPOC II, the need for considerable adjustment of the software to meet the requirements of Eurojust's legal framework and business processes became evident. Consequently, the EPOC III+ project was initiated to provide all Eurojust post-holders dealing with casework with a software tool that assisted them as much as possible in their daily work. The new EPOC III+ system has addressed one of the major issues, its user-friendliness. Access can now be gained from the office network and documents uploaded directly into the CMS. The JSB was pleased to hear of these improvements, which provide an incentive for users to enter information into the system.

4.8 *Access to the Customs Information System*

With regard to Eurojust's planned access to the Customs Information System (hereinafter "CIS"), the JSB learnt that the personal data types contained in the CIS would be accounted for by Article 15 of the Eurojust Decision. Eurojust's obligation to maintain a record of transmission and receipt would be fulfilled by the current practical possibility for Eurojust to access such log file, maintained centrally by the CIS Committee, notwithstanding Eurojust's ability to establish its own record.

The JSB agreed that this practice seemed acceptable given the safeguards in place. However, formal declarations of the data types, which would be accessible to Eurojust, together with configuration of the log files would need to be provided by Eurojust.

4.9 *Access to Schengen Information System*

The log file of the Schengen Information System will be an area of focus of the forthcoming inspection.

5. OPINIONS

5.1 *Cooperation agreements between Eurojust and third countries*

In accordance with Article 26(a) of the Eurojust Decision, the JSB was kept informed of all negotiations with third countries. The countries on the priority list included: Albania, Bosnia and Herzegovina, Cape Verde, Israel, Liechtenstein, Moldova, Montenegro, the Russian Federation, Serbia and Ukraine.

With regard to the Russian Federation, the JSB expressed its opinion that Eurojust should uphold the same level of data protection as with any other third country; the same data protection standards, as embodied in the Council of Europe instruments, should be respected and sufficient independent oversight should be ensured. In light of the Stockholm Programme

to enhance cooperation in the area of Freedom, Security and Justice¹, given the difficulties also faced by other organisations such as Europol regarding the lack of adequate protection of personal data in the Russian Federation, a suggestion was made that Eurojust could explore the possibility of concluding an agreement for the exchange of personal data for the time being, while continuing discussions regarding data protection for the future. Another suggestion was that the JSBs of Europol and Eurojust could exchange more information on this matter in future.

5.2 *Cooperation between Eurojust and other parties*

A Memorandum of Understanding between Eurojust and the Iberoamerican Network of International Legal Cooperation (Iber-RED), a network of South American, Spanish and Portuguese prosecutorial contact points, was signed on 4 May 2009. The JSB was informed of the signing of the Memorandum, but was not required to provide an opinion, as no exchange of personal data was foreseen.

5.3 *Agreement between Eurojust and Europol*

During the negotiation of the agreement between Eurojust and Europol, finally signed on 1 October 2009, the JSB of Europol had raised some concerns regarding the legal basis for the exchange of data between Eurojust and Europol. It was possible to overcome these concerns by basing the agreement on the new Europol Decision, which would enter into force from 1 January 2010, and by letting the agreement between Eurojust and Europol enter into force on the same day.

Liaison between the JSBs of Eurojust and Europol increased during 2009. Mr Peter Michael, from the Data Protection Secretariat, Council of the EU, and also secretary to the JSB of Europol, has regularly attended meetings, providing information and reflections on key issues to both JSBs, which has been welcomed by the members.

¹ The Stockholm Programme – an open and secure Europe serving and protecting citizens, 5731/10, CO EUR-PREP 2, JAI 81, POLGEN 8.

6. NEW DEVELOPMENTS IN DATA PROTECTION ACROSS EU

6.1 *Treaty of Lisbon*

The JSB discussed the implications of the changes that would be brought about with the entry into force of the Treaty of Lisbon (Article 16) and its impact for supervisory authorities. The topic will be further discussed in 2010.

6.2 *Future role of joint supervisory authorities*

In addition to the Lisbon Treaty, other new instruments will be entering into force in 2010, such as the Council Framework Decision on the Protection of Personal Data Processed in the Framework of Police and Judicial Cooperation in Criminal Matters¹ and the new Europol Decision. A review of the existing data protection framework, in light of the entry into force of the Lisbon Treaty and the Stockholm Programme, will take place. In light of this new legislation, the JSB reflected on how supervision will take place in the future.

The Chair of the JSB, Josef Rakovský, and his assistant, Milan Žondra, had the opportunity to attend a meeting with the JSB of Europol in Brussels in June. The meeting provided an opportunity to share experiences on the supervision of the exchange of personal data with Europol by the data protection authorities of third states and institutions.

Mr Carlos Campos Lobo, on behalf of the Chair of the JSB, also attended a meeting with the JSBs of Europol, the Schengen Information System and Customs Information System in Brussels in December regarding the future role of supervisory authorities. This meeting concluded that the JSBs should still play an important role in the future.

¹ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

7. APPEALS

No appeals were lodged with the JSB during 2009.

8. FUTURE OUTLOOK

The JSB presented a work programme for the period from 2009 to 2012 to the President of Eurojust, Mr José Luís Lopes da Mota, outlining those areas as long-term activities on which it would be focusing:

- proper implementation by Eurojust of the revised Eurojust Decision, in particular regarding the development of the CMS and the increased flow of information under Article 13 of the new Decision;
- proper compliance with the data protection rules regarding case-related operations;
- regular monitoring of whether Article 21(2) of the Eurojust Decision applies;
- security practices;
- rights of individuals, ensuring where necessary proper coordination with the national authorities from which data are normally obtained;
- proper level of data protection guaranteed in cooperation agreements with third countries/parties as well as proper monitoring of the implementation of the data protection provisions of the existing agreements;
- proper compliance with the data protection rules regarding non-case- related operations;
- proper follow-up being given by Eurojust to any recommendations.

Mr Lopes da Mota welcomed this initiative, as it provided a basis for a good partnership and cooperation between Eurojust and the JSB and would help Eurojust in defining its upcoming priorities.

The JSB plans to seek accreditation as a member of the International Conference of Data Protection and Privacy Commissioners during 2010.

The JSB will meet during 2010 on: 22 April, 17 June (plenary), 14 October and 9 December.

ANNEX I APPOINTEES TO THE JOINT SUPERVISORY BODY

Country	Member	Date of appointment
Bulgaria	Ms Pavlina PANOVA	04/07/2007
Belgium	Ms Nicole LEPOIVRE	09/01/2003
Czech Republic	Mr Josef RAKOVSKÝ	14/04/2004
Denmark	Mr Jakob LUNDSAGER	05/04/2009
Germany	Mr Bertram SCHMITT	23/06/2009
Estonia	Mr Pavel GONTSHAROV	25/10/2004
Greece	Mr Ioannis MAGGINAS	04/06/2009
Spain	Mr Artemi RALLO LOMBARTE	27/02/2007
France	Mr Frédéric BAAB	11/06/2009
Ireland	Mr Billy HAWKES	06/07/2005
Italy	Mr Alfonso PAPA	06/02/2003
Cyprus	Ms Goulla FRANGOU	23/07/2008
Latvia	Ms Zane PĒTERSONE	27/09/2004
Lithuania	Mr Egidijus BIELIŪNAS	08/12/2004
Luxembourg	Ms Lotty PRUSSEN	06/05/2002
Hungary	Mr Tibor KATONA	23/06/2008
Malta	Mr Joseph EBEJER	30/03/2009
Netherlands	Ms Jannette BEUVING	01/01/2007
Austria	Mr Gustav MAIER	26/08/2002
Poland	Mr Dariusz ŁUBOWSKI	26/05/2004

Portugal	Mr Carlos CAMPOS LOBO	01/04/2006
Romania	Ms Laura-Marina ANDREI	01/10/2007
Slovenia	Mr Rajko PIRNAT	23/03/2005
Slovak Republic	Ms Renáta JANÁKOVÁ	31/07/2008
Finland	Ms Anne HEIMOLA	01/01/2008
Sweden	Mr Hans FRENNERED	01/07/2002
United Kingdom	Mr Christopher GRAHAM	12/08/2009

Appointees who terminated office during 2009

Country	Member	Dates of office
United Kingdom	Mr Richard THOMAS	03/02/2003- 12/08/2009
Slovak Republic	Mr Ladislav DUDITŠ	24/04/2004-31/07/2008
France	Mr Didier GASSE	25/03/2004-11/06/2009
Germany	Mr Klaus TOLKSDORF	10/07/2002-23/06/2009
Denmark	Ms Lena ANDERSEN	19/09/2002-05/04/2009
Greece	Mr Gerasimos FOURLANOS	21/05/2002-03/06/2009