

Activity  
Report of  
Joint  
Supervisory  
Body of  
Eurojust

2008

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## **Foreword**

My participation as a troika member in the Joint Supervisory Body (JSB) throughout the year 2008 qualifies me to present a few introductory words to this report.

Firstly, I would like to express my thanks to those who manage day-to-day to ensure the operation of this control body, in particular to the Data Protection Officer and the JSB Secretariat staff. My thanks go also to both my predecessors in the chair of the JSB, Mr Rajko Pirnat from Slovenia and Mr Didier Gasse from France, who inspired me with their exemplary professional and concentrated way of managing JSB meetings.

Secondly, concerning the scope of activities of this body, I am going to briefly sum up the most important activities of the JSB in the year 2008. Life itself sometimes brings situations with which this control body has to deal, such as the e-mail disruption of the Eurojust computer network at the end of 2007. Eurojust's leadership behaved in a transparent manner by setting up a special commission to examine the case. The final approved version of the report on this incident contained concrete, corrective measures.

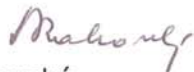
During 2008, the inspection team supervised by the JSB formed one year earlier has been carrying out its activities. Its members fulfilled their duties very well.

Next, I would like report on the competencies of the JSB related to the examination of the appeals as foreseen in Article 23(7) of the Eurojust Decision. My predecessor, Mr Pirnat, has already indicated in his foreword to the Activity Report 2007 that appeals to the JSB are practically non-existent. No appeal was made in 2008. In my opinion, the key and most complicated task of the JSB in 2008 was the preparation of the draft of the new Rules of Procedure of the JSB, permitting a change in the mandate of permanent members of the troika from a semi-annual period to a longer period in order to ensure better continuity of this body. This proposal was

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for the first time announced by the former chair, Mr Pirnat. During 2008, necessary changes to the Rules of Procedure of the JSB were carefully prepared in compliance with the Eurojust Decision. The work on this meritorious project proposed during the Slovenian Presidency was continued by my French predecessor, Mr Gasse and me so that during the Czech Presidency in 2009 it will be possible to hold elections to this new body according to the new rules.

Finally, allow me to say that in addition to professional findings achieved while working in the troika, I especially appreciate the human aspect. For me, as a citizen of a state that was not at the foundation of Eurojust, it is particularly pleasant, thanks to the professional affinity, I have found common ground with my colleagues despite language barriers. It strengthens my conviction, as a European citizen, that in the framework of the Third Pillar, Eurojust as a whole is able to operate efficiently and face new challenges.



Josef Rakovský

Chair of the Joint Supervisory Body, January – June 2009

## **Introduction**

The task of the Joint Supervisory Body (hereinafter 'JSB') is outlined in Article 23 of the Council Decision of 28 February 2002 setting up Eurojust<sup>1</sup>. An independent body, it monitors the activities of Eurojust in order to ensure that the processing of personal data is carried out in accordance with the Eurojust Decision. It also hears appeals by natural persons against decisions of Eurojust on requests for the exercise of a data subject's rights. Members are appointed from each Member State, of which three make up the JSB, comprising the member from the state that currently holds the presidency of the Council of the European Union and those of the two forthcoming presidencies.

The JSB is required to submit each year an activity report of the previous year's activities to the Council of the European Union pursuant to Article 23(12) of the Eurojust Decision and Article 9 of the Act of the Joint Supervisory Body<sup>2</sup>.

## **Activities**

### **1) ADMINISTRATION**

#### **a) Composition**

During the first half of 2008, Messrs Rajko Pirnat (Chair, Slovenia), Didier Gasse (France) and Josef Rakovský (Czech Republic) were the permanent members and during the second half of the year, Messrs Gasse (Chair), Rakovský and Hans Frennered (Sweden) were the permanent members. In total, twenty-seven persons were appointed to the JSB by Member States.

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<sup>1</sup> 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 6.3.2002](#), p. 1, as amended by Council Decision 2003/659/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, [OJ L 245 of 29.9.2003](#), p. 44 ('Eurojust Decision').

<sup>2</sup> 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 6.4.2004, p.1](#).

In August, the JSB was very sad to receive news of the death of Mr Paul Mifsud Cremona, Appointee for Malta.

### **b) Meetings**

The JSB met on four occasions in The Hague (21 February, 24 April, 17 July and 25 November 2008). The plenary meeting of the appointees took place on 24 April.

### **c) Budget and costs**

A total budget of €49,000 was allocated to the JSB, of which €36,738 was spent. In November 2008, Mr Gasse, chair, authorised the transfer of €2,700 from the remaining amount to another budget line of Eurojust.

## **2) SUPERVISION**

### **a) Inspection**

In accordance with Article 23(1) of the Eurojust Decision, an inspection was conducted at Eurojust in November 2007. The JSB gave the inspection team a mandate to focus on the following areas: content of the Case Management System (hereinafter 'CMS'); Eurojust's compliance with regard to the processing of case-related data; and the follow-up of the recommendations made in the inspection report of the JSB's first inspection in 2005. The resulting report was submitted to the President of the College of Eurojust on 2 June 2008<sup>3</sup>.

Generally, the inspectors observed overall progress in Eurojust since the first inspection in 2005 and noted that many of the recommendations, in particular those regarding the physical aspects of the information processing systems, had been implemented.

However, the report also mentions difficulties in complying with some rules in the CMS, some instances of non-compliance with Eurojust's Security Rules<sup>4</sup> and non-compliance in the processing of manual files. Additionally, it was noted that there should be increased awareness of Article 19 of the

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<sup>3</sup> Confidential document.

<sup>4</sup> Annex to the Decision of the College of Eurojust of 28 June 2007 Adopting the Security Rules of Eurojust, 2007- 10 ('Eurojust Security Rules').

Eurojust Decision regarding the right of data subjects to access their personal data.

Mr Lopes da Mota, President of Eurojust, met with the members on 25 November 2008 to discuss Eurojust's replies to the recommendations. As an outcome, it was agreed that the inspectors would meet with representatives of Eurojust's Information Management Unit on 12 February 2009 to discuss in more detail the technical implications of the recommendations.

#### **b) Investigation into e-mail service disruption at Eurojust**

A disruption of the e-mail service at Eurojust took 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 on the previous day. Upon the request of the President of Eurojust, an 'on the spot' check was carried out at Eurojust on 17 March by Mr Fernando Silva, Auditor of the Portuguese Data Protection Authority, and Mr Carlos Campos Lobo, JSB member for Portugal and head of the inspection team of 2007. The members of staff involved in this incident were interviewed and the log files were inspected. Subsequently, a report<sup>5</sup> was submitted to the College of Eurojust on 24 April making several recommendations. A final reply from Eurojust regarding this report is expected at the beginning of 2009.

#### **c) Data Protection Officer**

The JSB had the opportunity to exchange views with Ms Diana Alonso Blas, Data Protection Officer (hereinafter 'DPO'), at its meetings. She informed the members of all ongoing matters and issues that might require their attention during the following period. The JSB was pleased to be informed that a seconded national expert with expertise in the field of information security would be joining the Data Protection Service in 2009.

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<sup>5</sup> Confidential document.

**d) Annual survey carried out by the Data Protection Officer**

In accordance with Article 27 of Eurojust's Data Protection Rules<sup>6</sup>, Ms Alonso Blas conducted her third annual survey during July 2008. The National Desks of Cyprus, Latvia, Luxembourg, Malta and Slovenia were interviewed. For the first time, a survey was also carried out of an administrative unit, Budget & Finance. The survey confirmed an increase in the level of knowledge and understanding of data protection at Eurojust.

The JSB discussed the results of the survey at its meeting on 25 November and agreed that its general conclusions were in line with the findings of the JSB inspection carried out in November 2007. The JSB considered the report to be a very useful tool for inspections and the JSB in general.

**e) Amendment of the Eurojust Decision**

The year 2008 marked the beginning of a new era at Eurojust. A new legislative initiative was in process involving the amendment of the Eurojust Decision, necessary to stabilise the present situation of Eurojust and to help it face the future. The JSB followed with great interest the ongoing discussions regarding the amendment of the Eurojust Decision, and was pleased to note that the recommendation contained in its inspection report of 2005 regarding the possible amendment of Article 15 of the Eurojust Decision had been incorporated into the revised decision.

In this context, the JSB put forward a draft opinion on the opportunity to amend Article 23 of the Eurojust Decision, regarding the composition of the JSB, to the College of Eurojust on 3 March. This proposal highlighted in particular some drawbacks to the current system, as follows: 'The Joint Supervisory Body appreciates the fact that the composition of this body by three members is a very workable construction facilitating its operation and quick decision-making process and also provides a non-bureaucratic and cost-effective structure. It regrets, however, that the very frequent changes of members (every six months), and the short length of time for

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<sup>6</sup> 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.



the participation in the troika of Eurojust (eighteen months), makes it difficult to maintain a high level of knowledge of Eurojust's complex legal and technical framework, its organisation and the state of play regarding the many developments at Eurojust having an impact on the protection of personal data. It therefore considers that a more permanent structure would be beneficial, while keeping the reduced size and efficient operation of the body.' The JSB also expressed its support for the inclusion of a sentence in Article 23(10) of the Eurojust Decision enabling its secretariat to rely upon the expertise of the secretariat established by Council Decision 2000/641/JHA.

The implementation of Article 23 of the new Eurojust Decision will be a matter of priority for the JSB in 2009.

#### **f) E-POC and Case Management System**

The first E-POC (European Pool against Organised Crime) project was launched in 2004 with the aim of improving the exchange of information in the framework of judicial cooperation at EU level. The third iteration of this project was carried out by Eurojust and partners, including the Italian Ministry of Justice as promoting partner, the French, Romanian and Slovenian Ministries of Justice, and the private enterprise, CM Sistemi, as software development partner. The resulting software was used at Eurojust as the basis of Eurojust's CMS, to support the secure communication infrastructure and to implement the Eurojust data protection rules, including exchange of data with third parties. Furthermore, the JSB was regularly informed of the progress of the 'E-POC III+' project, which was being carried out by Eurojust alone and the goal of which was the improvement of the CMS. Finally, the JSB were kept up to date on the findings of the DPO's regular checks of the CMS.

#### **g) Schengen Information System II**

At the meeting on 25 November, Eurojust's Information Management Unit informed the JSB about Eurojust's access to the second generation of the

Schengen Information System (hereinafter 'SIS II')<sup>7</sup>, which was planned to become operational at the end of 2009. Some issues were raised concerning new data attributes and data protection implications of the system, in particular the types of data that could be accessed with the new system, such as biometric data in general, or elements of the European Arrest Warrant. The JSB considered that these issues would be solved by the adoption of the new Eurojust Decision, which would extend the forms of personal data that Eurojust may process.

Additionally, the JSB was informed that the SIS II audit logs would be kept, as in the current configuration of the system, in a central database in Strasbourg, which all accessing parties, including Member States, would be able to access (but only own communications). If necessary, the JSB would be able to access these log files. The JSB agreed with the comments of Eurojust, including the possibility that the JSB of Eurojust could contact the Joint Supervisory Authority of Schengen for any issues that might arise.

#### **h) Draft Council Framework Decision on Data Protection in the Third Pillar**

The Draft Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters of 23 September 2008, including the European Parliament's position thereon<sup>8</sup>, was presented to the members at their meeting in November. The implications of Amendment 29, as proposed by the Parliament, were questioned by the JSB, but Eurojust confirmed that the provision would have no impact on Eurojust's existing data protection instruments.

#### **i) Closed Circuit Television Memorandum of Understanding**

The JSB was informed of the status of the Memorandum of Understanding between Eurojust and the International Criminal Court at its meeting in

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<sup>7</sup> An information system for the exchange of information among the Member States party to the Schengen Agreement.

<sup>8</sup> European Parliament legislative resolution of 23 September 2008 on the draft Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters (16069/2007 – CS-0010/2008 – 2005/02029CNS).

November. Note was taken of Article 6(b) of the draft agreement regarding access to the surveillance equipment, which states that the JSB has access where relevant for the exercise of its functions.

### 3) OPINIONS

#### **a) Cooperation agreements between Eurojust and third countries**

During 2008, the JSB received several requests from Eurojust for opinions on the following planned agreements between Eurojust and non-EU countries:

##### **Switzerland**

The JSB submitted a positive opinion on the draft agreement between Eurojust and Switzerland to the College of Eurojust on 24 April 2008. This agreement was subsequently approved by the Justice and Home Affairs Council on 27 November 2008.

##### **Former Yugoslav Republic of Macedonia**

The JSB submitted a positive opinion on the draft agreement between the former Yugoslav Republic of Macedonia and Eurojust to the College of Eurojust on 27 October 2008. This agreement was subsequently approved by the Justice and Home Affairs Council on 28 November 2008.

#### **Revised draft model agreement with third countries**

The JSB gave a positive opinion on the revised draft model agreement of cooperation between Eurojust and third countries at its meeting in July 2008. The new text emphasized data protection, including Council of Europe Convention 108<sup>9</sup> and its additional protocols, and included a provision on sensitive data; it regulated in more detail the exercise of data subjects' rights; regular consultation between the DPO and the data protection authority of the third country was provided for; oversight by independent authorities, including JSB involvement, was improved; a provision on the fate of data already transmitted in case of termination of

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<sup>9</sup> Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data.

the agreement was added. Agreements would enter into force only after compliance in the legislation of both parties has been ensured.

## **b) Cooperation agreements between Eurojust and third parties**

### **Draft Agreement of Cooperation between Eurojust and Europol**

The JSB submitted a positive opinion on the draft agreement of cooperation between Eurojust and Europol on 25 November 2008.

### **Draft Practical Agreement on arrangements of cooperation between Eurojust and OLAF**

The JSB reiterated its positive opinion of 18 May 2007 on the proposed practical agreement between OLAF and Eurojust at its meeting on 24 April 2008. The members were updated on the status of the exchange of data with OLAF at their meeting in November 2008.

## **4) APPEALS**

The JSB received no appeals during 2008. The appeal case of 2007<sup>10</sup> resulted in no further action by the appellant.

## **5) FUTURE OUTLOOK**

At its meeting in November 2008, the JSB agreed that a matter of urgency for 2009 would be the revision of the current rules of procedure of the JSB in alignment with Article 23 of the new Eurojust Decision. Another priority issue would be the election of the future permanent members and the rotation system that would need to be put in place.

As part of Eurojust's future administrative planning, the JSB secretariat prepared a work programme for 2010, setting out objectives and activities of the JSB. This programme was approved at the meeting of 25 November 2008 and will be incorporated into Eurojust's overall work programme for 2010.

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<sup>10</sup> Lodged in October 2006; decided upon by the JSB in April 2007.

## **Annex I      Appointees to the Joint Supervisory Body**

<b>Country</b>	<b>Member</b>	<b>Date of appointment</b>
Bulgaria	Ms Pavlina PANOVA	04/07/2007
Belgium	Ms Nicole LEPOIVRE	09/01/2003
Czech Republic	Mr Josef RAKOVSKÝ	14/04/2004
Denmark	Ms Lena ANDERSON	19/09/2002
Germany	Mr Klaus TOLKSDORF	10/07/2002
Estonia	Mr Pavel GONTSHAROV	25/10/2004
Greece	Mr Gerasimos FOURLANOS	21/05/2002
Spain	Mr Artemi RALLO LOMBARTE	27/02/2007
France	Mr Didier GASSE	25/03/2004
Ireland	Mr Billy HAWKES	06/07/2005
Italy	Mr Alfonso PAPA	06/02/2003
Cyprus	Ms Goulla FRANGO	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 Paul MIFSUD CREMONA	18/10/2004
Netherlands	Ms Jannette BEUVING	01/01/2007
Austria	Mr Gustav MAIER	26/08/2002
Poland	Mr Dariusz ŁUBOWSKI	26/05/2004

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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	Mr Ladislav DUDITŠ	10/05/2004
Finland	Ms Anne HEIMOLA	01/01/2008
Sweden	Mr Hans FRENNERED	01/07/2002
United Kingdom	Mr Richard THOMAS	16/01/2003

Appointees who terminated office during 2008

<b>Country</b>	<b>Member</b>	<b>Dates of office</b>
Cyprus	Mr George EROTOCRITOU	16/09/2004-23/07/2008
Hungary	Ms Edit Mária VARGA	13/12/2004- 23/06/2008
Malta	Mr Paul MIFSUD CREMONA	18/10/2004- August 2008 (deceased)