

Activity Report 2004

Joint Supervisory Body
of Eurojust

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Joint Supervisory Body of Eurojust

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Foreword

As chairman of the Joint Supervisory Body of Eurojust, I am pleased to present the second Activity Report outlining the activities of the Joint Supervisory Body during the year 2004, chaired by Mr Joe MEADE from Ireland and Ulco Van de Pol from Netherland.

The main focus of the Joint Supervisory Body was still to stress on the emplacement of the structures and technical measures to enable EUROJUST to carry out its functions with respect to the Data Protection requirements.

The year 2004 saw many important developments in the field of Data Protection at Eurojust and above all the Rules of Procedure of the Joint Supervisory Body were adopted, as were Eurojust's internal Rules of Procedure on Data Protection.

Significant progress was made in the development of an electronic Case Management System and a Secure Network for the transfer of personal data.

I had the pleasure to welcome the appointed representatives of the new Member States and a thorough explanation was given in a series of presentations by the College and Administration of Eurojust during the plenary meeting which I chaired in April 2005.

I thank the former and current members, from United Kingdom and Austria, of the Joint Supervisory Body, with whom I had the pleasure to work, for their contribution and the precious advice to the work of the JSB and also the College and staff of Eurojust who have continued to provide every cooperation and keep a very positive attitude to the issues of data protection.

*Mrs Lotty Prussen
Chair (Luxembourg)*

Meetings 2004

The Joint Supervisory Body met on four occasions in The Hague during 2004 and one plenary meeting was held in March.

Appeals

No appeals were received in 2004.

Rules of Procedure of the Joint Supervisory Body

During the course of 2002/2003, each of the 15 countries appointed either a judge or a person holding an office with sufficient independence to be included on the list of judges who may sit on the Joint Supervisory Body. On 3rd March 2004, these 15, or their representatives, met for the first time. The main topic of discussion was the operational rules of the Body and, under the Chairmanship of Joe Meade (Ireland), the internal Rules of Procedure were finally adopted, in accordance with Article 23.9 of the Eurojust Decision:-

- The first draft of the Rules was kindly provided by the Council Secretariat, based on rules in existence for similar bodies, Europol and Schengen, amended to take account of the special requirements of Eurojust. These were then circulated to all members in July 2003 and comments received from members were taken on board. The revised rules were then re-circulated in 2003 for approval by written procedure following which five countries responded. Further comments were received from Germany and Portugal;
- The Rules were further amended accordingly, and were sent in English to representatives on 9th February. Translations of the amended Rules were sent on 16th February;
- In the event that the Rules require amendment, it is stipulated in Article 31 that they shall be evaluated between one and three years after their entry into force.

The Rules of Procedure of the Joint Supervisory Body were published in the Official Journal of the European Union on 6th April 2004, and are also available on the website of Eurojust.

Data Protection Rules for Eurojust

The College of Eurojust unanimously adopted Rules of Procedure on the processing and protection of personal data at Eurojust with effect from 1 October 2004. In accordance with Article 10.2 of the Eurojust Decision, the rules were subsequently adopted by the Council on 24th February 2004 and published in the Official Journal of the European Union on 19th March 2005. The Joint Supervisory Body was strongly involved in the drafting process. As a first step, the Data Protection Officer presented a set of provisional guidelines of general application to the Joint Supervisory Body in March, following which their recommendations were incorporated and an initial draft of the Rules prepared and presented in May. Further input was given, particularly regarding the case-related information and the topic of international data transfers. Finally, in October, the Joint Supervisory Body discussed and approved the Rules. They welcomed this further step in establishing a sound framework of data protection, whilst, at the same time providing the correct balance to allow Eurojust to operate efficiently in its important task of coordinating and improving cooperation between Member States in the fight against serious crime.

Following adoption in October, the College of Eurojust has begun to apply the Rules. In particular, the following steps were taken:-

- Notifications, called for in Article 34, giving prior notice of processing operations to the Data Protection Officer, have been received from National Members, allowing a register to be established which is referred to by the DPO to see what processes are being performed;
- National Members have also provided authorization of user access to the CMS in accordance with Article 26.

Agreements with Third Countries and other Agencies

In addition to the transfer of information between Eurojust and the National Authorities, the operational work of Eurojust also involves the transfer of personal data to partners. As a priority, a formal agreement has been put in place with Europol, the European Police Office and has been approved by the European Council, following consultation with the Joint Supervisory Body.

Furthermore, the Eurojust Decision¹ envisages the transfer of information, including personal data, to investigative authorities in third States on the basis of cooperation agreements.

The first such agreement has been reached with Norway on 10 September 2004 and formally sent to the Council for approval. The Data Protection

¹ OJ L 63, 6.3.2002, p.1.

Officer for Eurojust consulted with the Joint Supervisory Body at each stage of the drafting process and took on board their recommendations to improve the document. In particular, Articles 10 and 11 were amended to reflect the fact that transfers of data will be between Norway and Eurojust, and not between Norway and the College or individual National Members. The agreement was formally signed in Oslo in April 2005.

Case Management System

The College and Administration of Eurojust welcomed the substantial involvement of the Joint Supervisory Body in the development of the Case Management System, a major project for Eurojust during 2004. The JSB emphasized the need to put in place an effective and controllable in-house system to eventually replace manual files.

The Case Management System has been operational since 15th September 2004. Since then, no problems linked to data protection issues, i.e. handling or storage of data, have arisen. More than 100 cases, including 450 items of additional information have been input, reflecting a more in-depth use of all of the functionalities of the system by national desks. The Data Protection Officer performs a weekly search of the system and has noted an increase in the amount of personal data included.

A typical Eurojust case would involve a Member being asked to accelerate a judicial request. The information concerning the request would be entered in the system, and remains, in principle, accessible only to the National Member who opens the case. In compliance with Data Protection requirements, data can only be shared if the data controller actively decides to give access to the other National Members involved in the case.

In the future, the system will develop from a case recording system to a management system, becoming an integral part of the work flow. The next level of the project System will allow for operational analysis and will include further data protection functionalities. The Joint Supervisory Body will closely follow the progress in 2005.

Secure Network

An important next step will be to link the Case Management System to the Secure Network. Phase II will involve dividing the network into two physically separate entities and is due to be completed by the end of February 2005. An initial plan for Phase III has been drafted and will be further developed based on the requirements of National Authorities in Member States.

The Joint Supervisory Body has been consulted at each stage of the introduction of the Secure Network. In addition to their discussion in regular meetings, a senior privacy officer from the Dutch DPA was appointed as a representative of the JSB to provide regular advice and recommendations on the development of the system.

ANNEX 1 – [Rules of Procedure](#) of the Joint Supervisory Body
ANNEX 2 – Eurojust Rules of Procedure on [Data Protection](#)

Persons appointed to the **Joint Supervisory Body**

Belgium:	Mrs Nicole LEPOIVRE
Czech Republic:	Mr. Josef RAKOVSKÝ
Denmark:	Ms. Lena ANDERSON
Germany:	Mr. Klaus TOLKSDORF
Estonia:	Mr. Pavel GONTSHAROV
Greece:	Mr. Gerasimos FOURLANOS
Spain:	Mr. José Luis PIÑAR MAÑAS
France:	Mr. Didier GASSE
Ireland:	Mr. Joseph MEADE
Italy:	Mr. Alfonso PAPA
Cyprus:	Mr. George EROTOCRITOU
Latvia:	Ms. Zane PĒTERSONE
Lithuania:	Mr. Egidijus BIELIŪNAS
Luxembourg:	Mrs. Lotty PRUSSEN
Hungary:	Ms. Edit Mária VARGA
Malta:	Mr. Paul Mifsud CREMONA
Netherlands:	Mr. Ulco VAN DE POL
Austria:	Mr. Gustav MAIER
Poland:	Mr. Darius ŁUBOWSKI
Portugal:	Mr. José Alexandre GUIMARÃES DE SOUSA PINHEIRO
Slovenia :	Mr. Rajko PIRNAT
Slovakia :	Mr. Ladislav DUDITŠ
Finland :	Mrs. Hagar Gabriela NORDSTRÖM
Sweden :	Mr. Hans FRENNERED
United Kingdom :	Mr. Richard THOMAS

(Acts adopted under Title VI of the Treaty on European Union)

ACT OF THE JOINT SUPERVISORY BODY OF EUROJUST

of 2 March 2004

laying down its rules of procedure

(2004/C 86/01)

THE JOINT SUPERVISORY BODY

Having regard to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (hereinafter referred to as 'the Eurojust Decision')⁽¹⁾, last amended on 18 June 2003⁽²⁾, and in particular Article 23(9) thereof,

Whereas the persons appointed by the Member States in accordance with Article 23(1) of the Eurojust Decision shall adopt the rules of procedure of the Joint Supervisory Body which,

HAS ADOPTED THESE RULES OF PROCEDURE:

TITLE I

TASKS AND POWERS OF THE JOINT SUPERVISORY BODY

Article 1

Tasks

The Joint Supervisory Body shall have the tasks as set out in Articles 17(4)(b), 19(8), 23(1) and (7) of the Eurojust Decision.

Article 2

Powers

1. The Joint Supervisory Body shall, for the discharge of its tasks, have the powers provided for in the Eurojust Decision.

2. In particular, the Joint Supervisory Body shall be authorised to obtain information from Eurojust, to be given full access to all Eurojust documents whether on paper or stored electronically, and to be granted free access to all Eurojust premises at any time. This includes information on and access to hardware and software, whenever this is necessary for the performance of the tasks of the Joint Supervisory Body. Details may be stipulated in arrangements between the Joint Supervisory Body and the College of Eurojust.

⁽¹⁾ OJ L 63, 6.3.2002, p. 1.

⁽²⁾ OJ L 245, 29.9.2003, p. 44.

TITLE II

RULES OF PROCEDURE FOR THE JOINT SUPERVISORY BODY

Article 3

Composition

1. The Joint Supervisory Body shall be composed in accordance with Article 23, paragraphs 1, 2, 3, 4 and 5 of the Eurojust Decision.

2. The members of the Joint Supervisory Body shall be independent, not bound by instructions in the exercise of their duties and subject only to the law. In particular, they must not at the same time be members of another body set up under the Eurojust Decision or staff members of Eurojust.

3. A member of the Joint Supervisory Body who, in exceptional circumstances, is unable to attend a meeting may designate an alternate who fulfils the requirements of Article 23(1) of the Eurojust Decision. The rights and obligations conferred upon members by virtue of these rules of procedure shall be fully applicable to alternates.

4. Where a conflict of interest arises, the person concerned shall declare that interest and withdraw from taking part in the discussion and the decision on the matter. He or she may, where necessary, be excluded by unanimous vote cast in a secret ballot by the members attending the meeting. The person concerned shall be heard before any exclusion, but shall not take part in the decision. If a person withdraws or is excluded, he or she shall be replaced by his or her alternate.

Article 4

Chair

1. The Joint Supervisory Body shall be chaired in accordance with Article 23(3) of the Eurojust Decision.

2. The chairman shall represent the Joint Supervisory Body and chair its meetings. He or she shall monitor the smooth functioning of its work. He or she shall convene the meetings of the Joint Supervisory Body and determine the venue, date and time of such meetings. He or she shall open and close the meetings. He or she shall prepare the provisional agenda and ensure the execution of the decisions of the Joint Supervisory Body.

3. In the absence of the chairman, the member appointed by the member state which is next in line to hold the presidency of the Council, shall act as chairman, in accordance with Article 23(3) of the Eurojust Decision.

4. In order to prepare the work of the Joint Supervisory Body with regard to a particular issue, it may appoint from among its members, on a proposal from the chairman, a rapporteur. If the matter is urgent, such an appointment may be made by the chairman by virtue of his or her office. In this case he or she shall inform the members of the Joint Supervisory Body without delay.

5. The College of Eurojust, members of the staff of Eurojust or other persons may be invited to attend meetings of the JSB.

Article 5

Working methods

1. The Joint Supervisory Body shall meet as provided in Article 23(1) second paragraph of the Eurojust Decision. The President of Eurojust, the College, the Administrative Director or the Data Protection Officer shall be entitled to propose items for inclusion on the agenda.

2. With the exception of cases which the chairman deems to be urgent, the notice convening the meeting shall be transmitted in time to arrive at least two weeks before the meeting. The notice shall include the provisional agenda and the documents needed for the meeting, unless the nature of these documents does not allow so. The final agenda shall be adopted at the beginning of each meeting.

3. A meeting of the Joint Supervisory Body shall only be effective if at least two of the permanent members attend. Decisions shall be taken in accordance with Article 23(6) of the Eurojust Decision.

4. In accordance with 23(11) of the Eurojust Decision, the meetings of the Joint Supervisory Body shall not be public.

5. The Joint Supervisory Body shall meet on the basis of documents and draft papers drawn up in an official language of its members. However, a member shall have the right to request a translation in his or her own language.

6. The Joint Supervisory Body will liaise with the Data Protection Officer of Eurojust where appropriate.

7. Decisions of the Joint Supervisory Body may be taken by written procedure insofar as all members have approved this procedure. In urgent cases the chairman shall be entitled to initiate the written procedure. In both cases the chairman shall transmit a draft decision to the members of the Joint Supervisory Body. If the members do not object to the draft decision, within a period specified by the chairman of at least 14 days after receipt, the proposal shall be deemed to be adopted. If a member, within five working days after receipt of the draft decision, requests that it be orally discussed by the Joint Supervisory Body, the written procedure shall be discontinued.

Article 6

Checks on location and experts

1. In the framework of its powers in accordance with Article 23(1) of the Eurojust Decision, the Joint Supervisory Body may carry out data protection checks at Eurojust.

2. The Joint Supervisory Body may appoint one or more members for carrying out these checks. Such members may be assisted by experts as deemed appropriate by the Joint Supervisory Body. Experts may come from within national supervisory bodies or government agencies, unless such experts are not available. All experts must meet the security requirements applying under their national law and the respective rules of Eurojust.

3. Where the chairman deems a case to be urgent, he or she may appoint such members and experts by virtue of his or her office. In this case he or she shall inform the members of the Joint Supervisory Body without delay.

4. The members of the Joint Supervisory Body entrusted with carrying out a check shall report to the Joint Supervisory Body on the results of their work.

Article 7

Procedure in the event of violations

If the Joint Supervisory Body notes violations of the provisions of the Eurojust Decision with regard to the storage, processing or utilisation of personal data, it shall inform Eurojust accordingly and shall request a reply within a given period. Failure to comply with a decision of the Joint Supervisory Body taken in accordance with these Rules of Procedure shall be regarded as a violation of the Eurojust Decision. Decisions of the Joint Supervisory Body shall then be final and binding on Eurojust.

Article 8

Minutes

Minutes shall be made of all meetings of the Joint Supervisory Body. The draft minutes shall be prepared by the Secretariat under the direction of the chairman and submitted to the Joint Supervisory Body for adoption at its next meeting. Each participant shall have the right to suggest amendments to the draft minutes.

Article 9

Activity report

1. The Joint Supervisory Body shall submit an annual activity report to the Council in accordance with Article 23(12) of the Eurojust Decision. This report shall be drawn up during the first half of each year for the preceding year.

At least one month before the activity report is forwarded to the Council, Eurojust shall have the opportunity to deliver an opinion, which shall be attached to the report.

2. The Joint Supervisory Body shall decide whether or not to publish its activity report, and, if it decides to do so, determine how it should be published.

TITLE III

ADDITIONAL RULES OF PROCEDURE REGARDING APPEALS

Article 10

Tasks of the Joint Supervisory Body

1. The Joint Supervisory Body shall examine the appeals as foreseen in Article 23(7) of the Eurojust Decision

2. The Joint Supervisory Body shall take decisions in respect of the matters referred to in paragraph 1.

Article 11

Ad hoc members

1. If no member of the Member State from which the personal data that form the object of the appeal originate is represented in the Joint Supervisory Body, the person appointed by this Member State in accordance with Article 23(1)(3) of the Eurojust Decision shall act as ad-hoc judge in the Joint Supervisory Body for the duration of the examination of this appeal.

2. The rights and obligations conferred upon members by virtue of these rules of procedure shall be fully applicable to ad hoc members.

Article 12

Representation

The applicant may be assisted or represented by a lawyer or another adviser. A lawyer or an adviser may be excluded from the proceedings by the Joint Supervisory Body in cases of serious misconduct. If a lawyer or an adviser is excluded, the chairman shall stipulate a deadline for the party concerned to enable him or her to appoint another lawyer or adviser; the proceedings shall be suspended until the expiration of this deadline. A lawyer or an adviser shall produce proper authorisation from the applicant, if so requested by the Joint Supervisory Body.

Article 13

Languages

1. The procedure shall be conducted in one of the official languages of the Institutions of the European Union. The

applicant shall choose the official language in which the procedure shall be conducted. The language of the procedure shall be used in the oral statements and in the written documentation of the parties and in the minutes and decisions of the Joint Supervisory Body.

2. Documents in a language other than the procedural language shall be accompanied by a translation into the procedural language. Where documents are lengthy, the translation submitted may be restricted to excerpts or summaries. The Joint Supervisory Body may, by virtue of its office or upon application from a party, require a full translation at any time.

3. Where necessary, interpretation services and translations shall be provided for each member of the Joint Supervisory Body and for the parties. The decisions of the Joint Supervisory Body shall be translated into all official languages of the institutions of the European Union.

4. In cases where none of the official languages of the institutions of the European Union is accessible to the applicant, the complaint may be lodged in another language. The applicant is obliged to submit a summary in one of the official languages. The chairman or rapporteur shall have the complaint translated into the chosen language.

Article 14

Institution of the procedure

1. The appeal shall be lodged by submission of a written complaint at the Secretariat of the Joint Supervisory Body within thirty days of receiving Eurojust's decision as far as requests for correction or deletion of personal data are concerned and within three months after receiving Eurojust's decision in case of requests for access to personal data.

2. The applicant shall outline the basis of the complaint. It must be clear who is complaining, what he or she is complaining about and on what grounds. The complaint shall be accompanied by any supporting documentation available. The applicant may withdraw his or her appeal at any time.

3. The Secretariat shall acknowledge the receipt of the complaint within four weeks and give general information on the course of the procedure.

4. If the complaint does not meet the requirements, the Secretariat shall invite the applicant to rectify any omissions within four weeks.

5. Appeals which do not meet the requirements shall be refused by the Joint Supervisory Body on the proposal of the chairman or of the rapporteur.

*Article 15***Preliminary consideration**

1. If the complaint meets the requirements, it shall be considered by the Joint Supervisory Body.
2. A copy of the complaint shall be forwarded to Eurojust for its observations, which shall be submitted within four weeks, extension for two further weeks being possible.
3. The Joint Supervisory Body may request the College of Eurojust to nominate a representative for the appeal. The applicant shall be informed of this decision. The relevant national Members shall be sent a copy of the observations from the applicant in order to enable them to submit their own observations, to be submitted within four weeks, extension for two further weeks being possible.
4. After the observations have been received or the deadlines have expired, the complaint shall be dealt with by the Joint Supervisory Body within the ensuing three months.

*Article 16***Additional information**

1. The Joint Supervisory Body may ask the applicant, Eurojust, or any other body to provide information, evidence or comments to the Joint Supervisory Body. The parties are entitled to make suggestions to the Joint Supervisory Body regarding the taking of evidence or to call for the admission of evidence. The Joint Supervisory Body shall follow up these suggestions and decide on admission to the extent necessary for the examination of the case.
2. The Joint Supervisory Body may also decide to investigate on location at Eurojust. Article 6 applies likewise. In this case, the applicant or his or her adviser shall be informed of the result of the investigation.

*Article 17***Access to file of procedure**

1. All parties shall, if they wish, have access to the file of the procedure, and require the Secretariat of the Joint Supervisory Body to provide them with excerpts or photocopies at their own expense. Access shall be refused where one of the grounds mentioned in Article 19(4) of the Eurojust Decision applies or in order to protect the rights and freedoms of third parties.
2. Eurojust may indicate to what extent the information they provide should not be made available to the applicant, stating the reasons for such a restriction. The Joint Supervisory Body may ask for further reasons. To the extent that the Joint Supervisory Body finds such reasons acceptable, the information concerned shall be withheld. The Joint Supervisory

Body may decide otherwise only in the absence of acceptable reasons. In this case, the Joint Supervisory Body may require a summary to be made available to the applicant or require that certain information shall be provided to the applicant.

*Article 18***Hearing**

1. The parties shall be heard by the Joint Supervisory Body should they so request. The Joint Supervisory Body shall duly inform the parties of their right to be heard. This right shall be exercised in writing. The Joint Supervisory Body may decide to hold an oral hearing on request from one of the parties involved in the proceeding to the extent deemed necessary for the examination of the case. The Joint Supervisory Body shall duly inform the parties of their right to request an oral hearing. All parties shall be notified in due time of the oral hearing and have the right to be present.
2. An oral hearing shall be held in public unless the Joint Supervisory Body decides by virtue of its office or on application from one of the parties to exclude the public wholly or partly where the interests of public security, especially on the grounds referred to in Article 19(4) of the Eurojust Decision, or the protection of the privacy of an individual so require, or to the extent strictly necessary in the opinion of the Joint Supervisory Body in special circumstances where publicity would prejudice the proper determination of the appeal. If Eurojust requests that the public be excluded from the proceedings, the Joint Supervisory Body may decide otherwise only on the grounds that no reasons as referred to in the first sentence obtain.
3. The Joint Supervisory Body may decide, at the request of a party or at its own initiative, to hear a party without other parties being present, where this is required in order to ensure the proper functioning of Eurojust, to safeguard the security of a Member State or to protect the interests of the applicant or a third party. The absent parties shall be informed of proceedings taking place in their absence.

*Article 19***Hearing of witnesses and experts**

1. The Joint Supervisory Body may decide, at the request of a party or at its own initiative, to hear witnesses. All parties and the witnesses concerned shall be notified in due course of the hearing. Article 18(2) and (3) shall also apply.
2. Witnesses notified by the Joint Supervisory Body shall be entitled to reimbursement of their travel and accommodation expenses in accordance with the respective rule applying to Eurojust staff, and to compensation for loss of earnings, to the extent the Joint Supervisory Body finds equitable. They may receive the necessary advance payments.

3. The witnesses shall be heard by the Joint Supervisory Body. The members of the Joint Supervisory Body may address questions to the witnesses. With the permission of the chairman, the parties may address questions to the witnesses. Before the hearing begins, the chairman shall remind the witnesses that they should speak the truth. The Witness has the right to refuse to answer questions.

4. The Joint Supervisory Body may appoint an expert and define his or her mandate and entitlement of remuneration. The Joint Supervisory Body may decide to hear the expert. The rules regarding the hearing of witnesses shall also apply.

Article 20

Closing statements

Before reaching a final decision, the Joint Supervisory Body shall invite all parties to submit final comments.

Article 21

Minutes of appeal procedure

1. The Joint Supervisory Body shall keep minutes of the appeal procedure which shall reflect the course of each hearing and the statements made in it. The parties may request that certain documents or statements be included wholly or partly in the minutes. The minutes shall be signed by the chairman, forwarded to the parties and added to the file of the case. In cases referred to in Article 18(2) or Article 19(1), the Joint Supervisory Body shall impose restrictions.

2. Article 8 shall also apply to all meetings of the Joint Supervisory Body which are not attended by the Parties.

Article 22

Decisions and confidentiality

1. Decisions shall be taken by a simple majority of the members attending the meeting, unless provided otherwise in these rules. In case of a tied vote, the chairman shall have a casting vote. All persons taking part in the final decision must have attended an oral hearing, if one took place.

2. The deliberations shall remain confidential.

3. The final decision of the Joint Supervisory Body may contain the names of the parties and their representatives, the names of the members of the Joint Supervisory Body taking part in the decision, the date on which the decision is announced, the operative part of the decision, a brief presentation of the facts of the case and the reasons for the decision. It shall be conveyed to the parties and made public.

Article 23

Notifications

Notifications and other communications to parties, witnesses and experts shall be made by means that reasonably ensure

that they are duly informed and can be verified when necessary.

Article 24

Costs

1. The Joint Supervisory Body shall decide on the costs of the procedure in its final decision. The procedure before the Joint Supervisory Body shall be free of charge. If the appeal is upheld, wholly or partially, the necessary costs incurred by the applicant for lodging and processing the complaint shall be borne by Eurojust to the extent that the Joint Supervisory Body considers this equitable.

2. If an applicant is unable to bear all or part of the costs of the procedure, he or she may at any time on request be granted assistance for the costs. When he or she submits the application, he or she shall enclose documentation demonstrating that he or she is in need. The Joint Supervisory Body may withdraw the assistance at any time if the preconditions under which it was granted change in the course of the proceedings. If assistance is approved, the costs will be disbursed from the budget line of the Joint Supervisory Body. Where this is fair, the final decision may require a party to reimburse to the budget of Eurojust the advance payments granted. In submitting his or her application, the applicant shall declare his or her agreement to reimburse the costs if required by the final decision.

Article 25

Due process

In cases not provided for in these rules, the Joint Supervisory Body shall conduct its procedures in accordance with the general principles of due process.

TITLE IV

FINAL PROVISIONS

Article 26

Secretariat

1. The Joint Supervisory Body shall have a Secretariat, based at the headquarters of Eurojust, to assist it in the performance of its tasks. The Secretariat shall be a permanent body and its members recruited only on the basis of competence. The members of the Secretariat shall act solely in the best interests of the Joint Supervisory Body, shall be fully independent from Eurojust and shall not accept instructions from any other authority in the course of Joint Supervisory Body duties. Assignment to the Secretariat shall take place on a proposal from the Joint Supervisory Body. Staff members of the Secretariat shall not undertake other work without permission of the chairman of the Joint Supervisory Body.

2. The Secretariat shall operate under the direction of the chairman of the Joint Supervisory Body in accordance with the rules established by the Joint Supervisory Body. The Secretariat shall keep a register of appeals and all other documents.

3. The Secretariat shall ensure that the obligations under Article 25 of the Eurojust Decision shall also be respected in the work of the Joint Supervisory Body.

Article 27

Confidentiality

1. Members of the Joint Supervisory Body, experts and members of the Secretariat shall be obliged to treat in a confidential manner the circumstances which come to their knowledge in the context of their activity, unless the proper discharge of their task requires otherwise. This obligation shall continue to apply also when they cease to be active in that capacity.

2. Upon appointment, members of the Joint Supervisory Body, experts and members of the Secretariat shall declare their acceptance of these obligations.

3. In the case of a breach of confidentiality, a member of the Joint Supervisory Body may be suspended by unanimous vote cast in a secret ballot by the members attending a meeting of the Joint Supervisory Body. The person concerned shall be heard before, but shall not take part in the decision.

Article 28

Budget and costs

1. The Secretariat shall prepare proposals for an annual budget for the secretariat of the Joint Supervisory Body, which on approval shall be forwarded to the College.

2. The Joint Supervisory Body shall decide on the disbursement of the budget allocated to it which shall be administered by the Secretariat, in accordance with the Financial Regulation of Eurojust.

3. The costs of the Joint Supervisory Body, including the expenses for the members, which are necessary for the proper exercise of their duties, shall be borne by the budget line of the Joint Supervisory Body.

Article 29

Amendment of the rules of procedure

Amendments to these rules of procedure shall be adopted in accordance with the procedure laid down in Article 23(9) of the Eurojust Decision.

Article 30

Public access to documents

1. Any natural or legal person has a right of access to documents of the Joint Supervisory Body, subject to the principles, conditions and limits defined in this Article.

2. This Article shall apply to all documents held by the Joint Supervisory Body, that is to say, documents drawn up or received by it and in its possession.

3. Without prejudice to Paragraph 4 and 5 of this Article, documents shall be made accessible to the public either following a written application or directly in electronic form.

4. The Joint Supervisory Body shall refuse access to a document where disclosure would undermine the protection of:

a) the public interest as regards:

- public security and criminal investigations,
- defense and military matters,
- international relations,
- the financial, monetary or economic policy of the Community or a Member State,
- the fulfillment of Eurojust's tasks in reinforcing the fight against serious crime,
- national investigations in which Eurojust is assisting.

b) privacy and the integrity of the individual, in particular in accordance with the rules regarding the protection of personal data.

5. The Joint Supervisory Body shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property;
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.

6. Access to a document, drawn up by the Joint Supervisory Body for internal use or received, which relates to a matter where the decision has not been taken by the Joint Supervisory Body, shall be refused if disclosure of the document would seriously undermine the decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the Joint Supervisory Body shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the Joint Supervisory Body decision-making process, unless there is an overriding public interest in disclosure.

7. As regards third-party documents, the Joint Supervisory Body shall consult the third party with a view to assessing whether an exception in paragraph 4 or 5 is applicable, unless it is clear that the document shall or shall not be disclosed. A member state may request the Joint Supervisory Body not to disclose a document from that member state without prior agreement.

8. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

9. Applications for access to a document shall be made in any written form, including electronic form, in one of the official languages and in a sufficiently precise manner to enable the Joint Supervisory Body to identify the document. The applicant is not obliged to state reasons for the application.

10. If an application is not sufficiently precise, the Joint Supervisory Body shall ask the applicant to clarify the application and shall assist the applicant in doing so.

11. In the event of an application relating to a very long document or to a very large number of documents, the Joint Supervisory Body may confer with the applicant informally, with a view to finding a fair solution.

12. The Joint Supervisory Body shall provide information and assistance to citizens on how and where applications for access to documents can be made.

13. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 30 working days from registration of the application, the chairman of the Joint Supervisory Body shall either grant access to the document requested and provide access in accordance with paragraph

15 of this Article within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 14 of this Article.

14. In the event of a total or partial refusal, the applicant may, within 30 working days of receiving the reply of the Joint Supervisory Body, make a confirmatory application asking the Joint Supervisory Body to reconsider its position.

15. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies less than 20 A4 pages and direct access in electronic form shall be free of charge.

16. If a document has already been released by the Joint Supervisory Body, Eurojust or other institutions and is easily accessible to the applicant, the Joint Supervisory Body may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

17. Documents shall be supplied in an existing version and format with full regard to the applicant's preference.

Article 31

Evaluation

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.

Article 32

Entry into force of the rules of procedure

These rules of procedure shall enter into force on the day following that of their adoption in accordance with Article 23(9) of the Eurojust Decision.

Done at The Hague, 2 March 2004.

For the Joint Supervisory Body

The Chairman

Joe MEADE

(Acts adopted under Title VI of the Treaty on European Union)

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)

TITLE I

DEFINITIONS

Article 1

Definitions

For the purpose of these rules and any other text implementing them:

- (a) *'Eurojust Decision'* means the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, as modified by the Council Decision of 18 June 2003;
- (b) *'The College'* means the College of Eurojust, as referred to in Article 10 of the Eurojust Decision;
- (c) *'National Member'* means the National Member seconded to Eurojust by each Member State, as referred to in Article 2(1) of the Eurojust Decision;
- (d) *'Assistant'* means a person who may assist each National Member, as referred to in Article 2(2) of the Eurojust Decision;
- (e) *'Eurojust's staff'* means the Administrative Director, as referred to in Article 29 of the Eurojust Decision, as well as the staff referred to in Article 30 of the Eurojust Decision;
- (f) *'the Data Protection Officer'* means the person appointed in accordance with Article 17 of the Eurojust Decision;
- (g) *'the Joint Supervisory Body'* means the independent body established in accordance with Article 23 of the Eurojust Decision;
- (h) *'personal data'* means any information relating to an identified or identifiable natural person (*'data subject'*); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity;
- (i) *'processing of personal data'* (*'processing'*) means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- (j) *'personal data filing system'* (*'filing system'*) means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;
- (k) *'controller'* means the person, who alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or European laws or regulations, the controller or the specific criteria for his nomination may be designated by national or European law;
- (l) *'processor'* means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;
- (m) *'third party'* means any natural or legal person, public authority, agency or any body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process data; and
- (n) *'recipient'* means a natural or legal person, public authority, agency or any other body to whom data are disclosed, whether a third party or not.

TITLE II

SCOPE OF APPLICATION AND STRUCTURE

Article 2

Scope of application

1. The present rules of procedure shall apply to the processing of personal data by Eurojust, wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form part of a filing system or are intended to form part of a filing system in accordance with the Eurojust Decision.

2. The present rules shall apply to all information collected and further processed by Eurojust, that is to say, information drawn up or received by it and in its possession, concerning matters relating to the policies, activities and decisions falling within Eurojust's sphere of responsibility.

3. The present rules shall not apply to information which has been transmitted to a National Member of Eurojust exclusively in the context of his or her judicial powers, as defined in Article 9(3) of the Eurojust Decision.

Article 3

Structure

1. All personal data shall be considered case-related or non-case-related. Personal data shall be considered as case-related if it is linked to the operational tasks of Eurojust, as defined in Articles 5, 6 and 7 of the Eurojust Decision.

2. Case-related data shall be processed in accordance with Titles III and IV. Non-case-related data shall be processed in accordance with Titles III and V.

TITLE III

PRINCIPLES OF GENERAL APPLICATION TO EUROJUST

Article 4

Right to privacy and data protection

Eurojust shall act in full respect of the human rights and fundamental freedoms of individuals and in particular of their right to privacy with regard to the processing of their personal data, regardless of nationality or place of residence.

Article 5

Principles of lawfulness and fairness, proportionality and necessity of processing

1. Personal data must be processed fairly and lawfully.
2. Eurojust shall only process personal data that are necessary, adequate, relevant and not excessive in relation to the purposes for which they are collected or further processed.
3. Eurojust shall define its processing operations and systems in accordance with the aim of collecting or further processing only personal data that are necessary as defined in paragraph 2. In particular, use is to be made of the possibilities for aliasing and rendering data anonymous, in so far as this is

possible, taking into account the purpose of the processing and that the effort involved is reasonable.

Article 6

Data quality

1. Eurojust shall ensure that personal data are accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified.

2. Personal data shall be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed, in accordance with Article 5(2).

Article 7

Data security

1. In accordance with Article 22 of the Eurojust Decision and with the present rules, Eurojust shall put in place the necessary technical measures and organisational arrangements to protect personal data against accidental or unlawful destruction, accidental loss or unauthorised disclosure, alteration, access or any unauthorised form of processing. In particular, measures must be taken to ensure that only those authorised to access personal data can have access to such data.

2. All measures taken shall be appropriate to the risks presented by the processing and to the nature of the data processed.

3. Eurojust shall develop a comprehensive security policy in accordance with Article 22(2) of the Eurojust Decision and with these rules. This policy shall take full account of the sensitivity of the work carried out by the judicial cooperation unit and shall include rules regarding classification of documents, screening of personnel working for Eurojust and actions to be taken in the case of security breaches. The Joint Supervisory Body shall be consulted regarding the security policy of Eurojust.

4. All Eurojust postholders shall be adequately informed about the Eurojust security policy and shall be required to use the technical and organisational measures put at their disposal in line with the applicable data protection and security requirements.

*Article 8***Right of information to the data subjects**

1. Without prejudice to the special provisions in Title IV in respect of case-related data and in Title V in respect of non-case-related data, data subjects must be provided with information as to the purpose of the processing and the identity of the data controller, the recipients or categories of recipients, the existence of the right of access to and the right to rectify the data concerning him or her and any further information such as the legal basis of the processing operation for which the data are intended, the time limits for storing the data and the right to have recourse at any time to the Joint Supervisory Body in so far as such further information is necessary, having regard to the purposes and the specific circumstances in which the data are processed, to guarantee fair processing in respect of the data subject.

2. This information must be provided at the latest at the moment of the collection of the data from the data subject or, when receiving the data from a third party, at the time of undertaking the recording of personal data or, if disclosure to a third party is envisaged, no later than the time when the data are first disclosed or, in the cases provided for in Chapter II of Title IV of these rules, as soon as the purposes of the processing, national investigations and prosecutions and the rights and freedoms of third parties are not likely to be jeopardised.

*Article 9***Rights of the data subjects to access, correction, blocking and deletion**

1. The data subject shall have a right to access, correction, blocking, and, as the case may be, deletion. Eurojust shall define, where necessary in cooperation with the respective national authorities involved, procedures to facilitate the exercise of these rights by data subjects.

2. The Data Protection Officer shall ensure that data subjects are informed of their rights at their request.

*Article 10***Confidentiality of processing**

In accordance with Article 25 of the Eurojust Decision, all persons called upon to work within and with Eurojust are bound by strict confidentiality obligations. All necessary measures shall be taken by Eurojust to ensure that these obligations are complied with and that any breaches of such obligations are promptly reported to the Data Protection Officer and

the head of the Security Department, who shall ensure that appropriate steps are taken.

*Article 11***Internal processors**

Unless required to do so by national or European law, a person acting as processor within Eurojust, with access to personal data, shall not process them except on instructions from the controller.

*Article 12***Enquiries, information requests and claims by Eurojust postholders**

1. For the purposes of Article 17(2) and (4) of the Eurojust Decision, the Data Protection Officer shall, on request, provide information to any Eurojust postholder regarding data processing activities of Eurojust. The Data Protection Officer shall respond to enquiries and act on any information requests or claims regarding an alleged breach of the provisions of the Eurojust Decision, these rules or any other rules governing the processing of personal data by Eurojust. No one shall suffer prejudice on account of having raised an alleged breach of the provisions governing the processing of personal data with the Data Protection Officer.

2. All persons working at Eurojust shall cooperate with the College, the National Members, the Data Protection Officer and the Joint Supervisory Body in the framework of enquiries, investigations, audits or any other data protection related activities.

TITLE IV

RULES FOR CASE-RELATED PROCESSING OPERATIONS

CHAPTER I

Conditions to make the processing of personal data legitimate*Article 13***Personal data processed in the context of case-related activities**

1. In the context of case-related activities, Eurojust shall, insofar as it is necessary to achieve its objectives, process personal data by automated means or in structured manual files in accordance with Articles 14, 15 and 16 of the Eurojust Decision.

2. The National Member/s processing personal data concerning individual cases shall determine the purposes and means of the processing of personal data and shall be therefore considered as controller or, where applicable, co-controllers.

Article 14

Lawfulness and fairness of processing

Personal data may be collected and further processed in the context of case-related activities insofar as the processing is necessary for the performance of the tasks of Eurojust in reinforcing the fight against serious crime.

Article 15

Purpose limitation

Personal data processed by Eurojust in the framework of investigations and prosecutions shall under no circumstances be processed for any other purpose.

Article 16

Data quality

1. When information is transmitted to Eurojust by a Member State or an external party in the context of an investigation or prosecution, it shall not be responsible for the correctness of the information received but shall ensure, from the moment of reception, that all reasonable steps are taken to keep the information updated.

2. If Eurojust detects any inaccuracy affecting the data in question, it shall inform the third party from whom the information was received and shall correct the information.

Article 17

Special categories of data

1. Eurojust shall take appropriate technical measures to ensure that the Data Protection Officer is automatically informed of the exceptional cases in which recourse is made to Article 15(4) of the Eurojust Decision. The case management system shall ensure that such data can not be included in the index referred to in Article 16(1) of the Eurojust Decision.

2. When such data refer to witnesses or victims within the meaning of Article 15(2) of the Eurojust Decision the case management system shall not record this information unless a decision of the College is documented.

Article 18

Processing of the categories of personal data referred to in Article 15(3) of the Eurojust Decision

1. Eurojust shall take appropriate technical measures to ensure that the Data Protection Officer is automatically informed of the exceptional cases in which, for a limited period of time, recourse is made to Article 15(3) of the Eurojust Decision.

2. When such data refer to witnesses or victims within the meaning of Article 15(2) of the Eurojust Decision, the case management system shall not record this information unless a decision taken jointly by at least two National Members is documented.

CHAPTER II

Rights of the data subjects

Article 19

Right of information of the data subjects

1. In the context of the operational work of Eurojust, data subjects shall be provided with information as to the processing, as soon as it is apparent that the provision of this information to the data subject would not undermine:

- (a) the fulfilment of Eurojust's tasks in reinforcing the fight against serious crime; or
- (b) national investigations and prosecutions in which Eurojust assists; or
- (c) a monitoring, inspection or regulatory task connected, even occasionally, with the exercise of official authority in the cases referred to in clauses (a) and (b); or
- (d) the rights and freedoms of third parties.

2. Recourse to the cases enumerated in paragraph 1 shall be recorded in the temporary work file related to the case, mentioning the basis for the decision which has been taken by the National Member(s) responsible for this file.

Article 20

Right of access of the data subjects

Every individual shall be entitled to have access to personal data concerning him or her processed by Eurojust under the circumstances laid down in Article 19 of the Eurojust Decision.

*Article 21***Procedure for the exercise of the rights of the data subjects**

1. Individuals wishing to exercise their rights as data subjects may address their requests directly to Eurojust or through the authority appointed for this purpose in the Member State of his or her choice, which shall transmit the request to Eurojust.

2. Requests for the exercise of rights shall be dealt with by the National Member(s) concerned with the request, who shall provide a copy of the request to the Data Protection Officer for its registration.

3. The National Member(s) concerned with the request shall carry out the necessary checks and inform the Data Protection Officer of the decision reached in the specific case. This decision will take full account of these rules and of the legislation applicable to the request as defined in Article 19(3) of the Eurojust Decision, of the grounds for denial enumerated in Article 19(4) of the Eurojust Decision and of consultations with the competent law enforcement authorities that shall take place before reaching a decision, as stated in Article 19(9) of the Eurojust Decision.

4. The Data Protection Officer shall, should the case so require, carry out additional checks in the case management system and inform the National Member(s) concerned if any additional relevant information has been found through these checks. The National Member(s) concerned may, on the basis of the information provided by the Data Protection Officer, decide to reconsider the initial decision.

5. The Data Protection Officer shall communicate the final decision taken by the National Member(s) concerned to the data subject, in line with Article 19(6) of the Eurojust Decision, and shall inform the data subject of the possibility to appeal to the Joint Supervisory Body if he or she is not satisfied with the reply given by Eurojust.

6. The request shall be dealt with in full within three months of receipt. The data subject may refer the matter to the Joint Supervisory Body if there has not been a response to his or her request within this time limit.

7. In the cases where the request has been received through a national authority, the National Member(s) concerned shall ensure that this authority is informed of the fact of a reply given by the Data Protection Officer to the data subject.

8. Eurojust shall put in place cooperation procedures with the national authorities appointed for the purpose of dealing of data subjects' rights to ensure that requests are adequately and timely forwarded to Eurojust.

*Article 22***Information to third parties following correction, blocking or deletion of case-related personal data**

Eurojust shall put in place appropriate technical measures to ensure that, in the cases where Eurojust corrects, blocks or erases personal data following a request, a list of the suppliers and addresses of these data is automatically produced. In accordance with Article 20(5) of the Eurojust Decision, the controller shall ensure that those included in the list are informed of the changes performed on the personal data.

CHAPTER III

Data security issues*Article 23***Automated case management system**

1. Eurojust shall put in place an automated case management system integrating a filing system, that shall be used by the National Members when dealing with case-related activities and which shall include the temporary work files and index as defined in Article 16 of the Eurojust Decision. This system shall include functionalities such as case management, description of the workflow, cross-references of information and security.

2. The case management system shall be approved by the College after having consulted the Data Protection Officer, the Joint Supervisory Body and the relevant Eurojust staff and shall take full account of the requirements of Article 22 and any other relevant provisions of the Eurojust Decision.

3. The case management system shall enable National Members to identify the purpose and specific objectives for which a temporary work file is opened, within the framework of the tasks mentioned in Articles 5, 6 and 7 of the Eurojust Decision.

*Article 24***Temporary work files and index**

1. In accordance with Articles 14(4) and 16 of the Eurojust Decision, Eurojust shall establish an index of data relating to investigations and temporary work files which also contain personal data. Both the index and the temporary work files shall form part of the case management system referred to in Article 23 and shall respect the restrictions on the processing of personal data established in Article 15 of the Eurojust Decision.

2. National Members shall be responsible for the opening of new temporary work files linked to the cases they are dealing with. The case management system shall automatically allocate a reference number (identifier) to each new temporary work file opened.

3. Eurojust shall put in place an automated case management system allowing National Members to keep the personal data they process in a temporary work file restricted or to give access to it or to part(s) of it to other National Member(s) involved in the case to which the file relates. The case management system shall allow them to define the specific items of personal and non-personal data to which they wish to give access to other National Member(s), Assistant(s) or authorised staff members that are involved in the handling of the case as well as to select the items of information they wish to introduce in the index, in accordance with Articles 14 and 15 of the Eurojust Decision and ensuring that, at least, the following items are included in the index: reference to the temporary work file; types of crime; Member States, international organisations and bodies and/or authorities of third States involved; involvement of the European Commission or EU bodies and entities; objectives and status of the case (open/closed).

4. When a National Member gives access to a temporary work file or a part of it to one or more involved National Member(s), the case management system shall ensure that the authorised users have access to the relevant parts of the file but that they can not modify the data introduced by the original author. The authorised users can, however, add any relevant information to the new parts of the temporary work files. Likewise, information contained in the index can be read by all authorised users of the system but can only be modified by its original author.

5. The Data Protection Officer shall be automatically informed by such a system of the creation of each new work file that contains personal data and, in particular, of the exceptional cases in which recourse is made to Article 15(3) of the Eurojust Decision. The case management system shall mark such data in a way that will remind the person who has introduced the data in the system of the obligation to keep these data for a limited period of time. When such data refer to witnesses or victims within the meaning of Article 15(2) of the Eurojust Decision, the system shall not record this information unless a decision taken jointly by at least two National Members has been documented.

6. The case management system shall automatically inform the Data Protection Officer of the exceptional cases in which recourse is made to Article 15(4) of the Eurojust Decision. When such data refer to witnesses or victims within the meaning of Article 15(2) of the Eurojust Decision, the system shall not record this information unless a decision taken by the College has been documented.

7. The case management system shall ensure that only personal data referred in Article 15(1)(a) to (i) and (k) and Article 15(2) of the Eurojust Decision can be recorded in the index.

8. The information contained in the index must be sufficient to comply with the tasks of Eurojust and, in particular, with the objectives of Article 16(1) of the Eurojust Decision.

Article 25

Log files and audit trails

1. Eurojust shall put in place appropriate technical measures to ensure that a record is kept of all processing operations carried out upon personal data. The case management system shall in particular ensure that a record of transmission and receipt of data as defined in Article 17(2)(b) of the Eurojust Decision is kept for the purposes of Article 19(3) of the Eurojust Decision. Such record shall ensure, as required by Article 22 of the Eurojust Decision, that it is possible to verify and establish to which bodies personal data are transmitted and which personal data have been input into automated data processing systems and when and by whom the data were input.

2. The Data Protection Officer shall review these records regularly in order to be able to assist the National Members and the College regarding any data protection issue and shall make the necessary enquiries in cases of irregularities. Where necessary, the Data Protection Officer shall inform the College and the Joint Supervisory Body following the procedure established in Article 17(4) of the Eurojust Decision of any data protection breaches evidenced by the abovementioned records. The Data Protection Officer will ensure that, where appropriate, the Administrative Director is informed, to enable him or her to take the necessary measures within the administration.

3. The Data Protection Officer shall give full access to the Joint Supervisory Body to the records referred in paragraph 1 when so requested.

Article 26

Authorised access to personal data

1. Eurojust shall take appropriate technical measures and provide for organisational arrangements to ensure that only National Members, their Assistants and authorised Eurojust staff have, for the purpose of achieving Eurojust's objectives, access to personal data processed by Eurojust in the framework of its operational activities.

2. These measures shall take account of the purposes for which the data have been collected and further processed, the state of the art, the level of security required by the sensitive nature of the work carried out by Eurojust and the requirements imposed by Article 22 of the Eurojust Decision.

3. Each National Member of Eurojust shall document and inform the Data Protection Officer regarding the access policy he or she has authorised within his or her national desk regarding case-related files. In particular, National Members shall ensure that appropriate organisational arrangements are made and complied with and that proper use is made of the technical and organisational measures put at their disposal by Eurojust.

4. The College may authorise other Eurojust staff to have access to case-related files where necessary for the performance of the tasks of Eurojust.

Article 27

Audits and control

1. The Data Protection Officer shall monitor the lawfulness and compliance with the provisions of the Eurojust Decision, the present Rules of Procedure and any other rules regarding the processing of personal data applicable to Eurojust. To that end, the Data Protection Officer shall assist the National Members regarding data protection questions and shall run annual surveys on the compliance with the abovementioned rules within Eurojust. The Data Protection Officer shall report to the College and the Joint Supervisory Body on the results of these surveys as well as on any other relevant developments within Eurojust. The Data Protection Officer will ensure that, where appropriate, the Administrative Director is informed, to enable him/her to take the necessary measures within the administration.

2. The Joint Supervisory Body shall carry out controls and audits in accordance with Article 23(7) of the Eurojust Decision.

CHAPTER IV

Data flows to third parties or organisations

Article 28

Data flows to third parties or organisations

1. Eurojust shall endeavour to put in place cooperation agreements containing suitable provisions regarding exchange of personal data with all partners with whom exchanges of data take place on a regular basis.

2. Without prejudice to the cases in which such cooperation agreements are in place, Eurojust shall only transfer personal data to a third country or to any of the entities referred to in Article 27(1) of the Eurojust Decision if they are subject to the Convention for the Protection of the Individuals with regard to Automatic Processing of Personal Data signed in Strasbourg on 28 January 1981 or when an adequate level of protection is ensured.

3. The decision concerning transfers to non-parties of the Council of Europe Convention of 28 January 1981 shall be taken by the National Member(s) involved, on the basis of the assessment concerning the adequacy of the level of protection made by the Data Protection Officer. The adequacy of the level of protection shall be assessed in the light of all the circumstances for each transfer or category of transfers. In particular, the assessment will result from an examination of the following elements: the type of data, the purposes and duration of proces-

sing for which the data are transferred, the country of origin and the country of final destination, the general and sectoral rules of law applicable in the state or organisation in question, the professional and security rules which are applicable there, as well as the existence of sufficient safeguards put in place by the recipient of the transfer. Such safeguards may in particular be the result of written agreements binding the controller who makes the transfer and the recipient who is not subject to the jurisdiction of a party to the Convention. The content of the agreements concerned must include the relevant elements of data protection. In cases where the assessment of the level of protection raises difficulties, the Data Protection Officer shall consult the Joint Supervisory Body before making an assessment on a specific transfer.

4. However, even when the conditions referred in the previous paragraphs are not fulfilled, a National Member may, under the exceptional circumstances enumerated in Article 27(6) of the Eurojust Decision, transfer data to a third country with the sole aim of taking urgent measures to counter imminent serious danger threatening a person or public security. The National Member shall document such an exceptional transfer in the temporary work file related to the case, stating the grounds for such a communication, and shall inform the Data Protection Officer of such a communication. The Data Protection Officer shall verify if such transfers only take place in exceptional and urgent cases.

CHAPTER V

Time limits for the storage of personal data

Article 29

Time limits for the storage of personal data

1. Eurojust shall put in place appropriate technical measures to ensure that the time limits for the storage of personal data defined in Article 21 of the Eurojust Decision are observed.

2. The case management system shall in particular ensure that a review of the need to store data in a temporary work file is carried out every three years after they were entered. Such a review must be properly documented in the system, including the motivation for any decision taken, and the result of it shall be automatically communicated to the Data Protection Officer.

3. The case management system shall particularly mark the data recorded for a limited period of time in accordance with Article 15(3) of the Eurojust Decision. For these categories of data a review of the need to retain the data shall take place every three months and shall be documented in the same way as outlined in paragraphs 1 and 2.

4. The controller shall, where necessary, consult the College and the Data Protection Officer regarding any decision to retain the data for a longer period following a review.

TITLE V

RULES FOR NON-CASE-RELATED PROCESSING OPERATIONS

CHAPTER I

General principles*Article 30***Lawfulness and fairness of processing**

Personal data must be processed fairly and lawfully. In particular, personal data may be processed only if:

- (a) processing is necessary for compliance with a legal obligation to which the controller is subject, or
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract, or
- (c) the data subject has unambiguously given his or her consent, or
- (d) processing is necessary in order to protect the vital interests of the data subject, or
- (e) processing is necessary for the purposes of the legitimate interests pursued by the controller, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 4 of the present rules.

*Article 31***Purpose limitation**

1. Personal data must be processed for a specific and well-defined lawful and legitimate purpose and subsequently further processed only insofar as this is not incompatible with the original purpose of the processing.
2. Personal data collected exclusively for ensuring the security or the control and management of the processing systems or operations shall not be used for any other purpose, with the exception of the prevention, investigation, detection and prosecution of serious criminal offences.

*Article 32***Processing of special categories of data**

1. The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs,

trade-union membership, health or sex life or criminal convictions for non-case-related purposes is prohibited.

2. This prohibition shall not apply if:

- (a) the data subject has given his or her express consent to the processing of those data or
- (b) the processing is necessary for the purposes of complying with the specific rights and legal obligations of the controller, such as obligations in the field of tax or employment law applicable to the controller or, if necessary, insofar as it is agreed upon by the Data Protection Officer, subject to adequate safeguards, or
- (c) the processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving his or her consent, or
- (d) the processing relates to data which are manifestly made public by the data subject or is necessary for the establishment, exercise or defence of legal claims.

3. Data referred to in paragraph 1 shall only be processed for the purpose for which they were originally collected.

*Article 33***Exceptions to the right of information of the data subject**

1. In the context of the non-operational work of Eurojust, exceptions to the general principle of information to the data subject are possible when the provision of this information to the data subject would undermine:
 - (a) an important economic or financial interest of a Member State or of the European Union or
 - (b) the protection of the data subject or of the rights and freedoms of others or
 - (c) the national security, public security or defence of the Member States.
2. The Data Protection Officer shall be informed when recourse to these exceptions is made.

*Article 34***Notification to the Data Protection Officer**

1. Every controller shall give prior notice to the Data Protection Officer of any processing operation or sets of such operations intended to serve a single purpose or several related purposes.

2. The information to be given shall include:
- (a) the name of the controller and an indication of the organisational parts of an institution or body entrusted with the processing of personal data for a particular purpose;
 - (b) the purpose or purposes of the processing;
 - (c) a description of the category or categories of data subjects and of the data or categories of data relating to them;
 - (d) the legal basis of the processing operation for which the data are intended;
 - (e) the recipients or categories of recipient to whom the data might be disclosed; and
 - (f) a general description allowing a preliminary assessment to be made of the appropriateness of the security measures.
3. Any relevant change affecting information referred to in the previous paragraph shall be notified promptly to the Data Protection Officer.

Article 35

Register

1. A register of processing operations notified in accordance with the previous provision shall be kept by the Data Protection Officer.
2. The register shall contain at a minimum the information referred to in Article 34(2)(a) to (f).
3. The Data Protection Officer shall make available to the Joint Supervisory Body any information contained in the register when so requested.

Article 36

Processing of personal data on behalf of controllers

1. Where a processing operation is carried out on its behalf by an external processor, the controller shall choose a processor providing sufficient guarantees in respect of the technical and organisational security measures required by Article 22 of the Eurojust Decision and any further relevant documents and ensure compliance with those measures.
2. The carrying out of a processing operation by way of an external processor shall be governed by a contract or legal act binding the processor to the controller and stipulating in particular that:
 - (a) the processor shall act only on instructions from the controller; and
 - (b) the obligations regarding confidentiality and security established by the Eurojust Decision and the present rules of

procedure shall also be incumbent on the processor unless, by virtue of Article 16 or Article 17(3), second indent, of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the free movement of such data⁽¹⁾, the processor is already subject to obligations with regard to confidentiality and security laid down in the national law of one of the Member States.

3. For the purposes of keeping proof, the parts of the contract or the legal act relating to data protection and the requirements relating to confidentiality and security measures shall be in writing or in another equivalent form.

Article 37

Automated individual decisions

The data subject shall have the right not to be subject to a decision which produces legal effects concerning him or her or significantly affects him or her and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him or her, such as his or her performance at work, reliability or conduct, unless the decision is expressly authorised pursuant to national or European legislation or, if necessary, by the Data Protection Officer. In either case, measures to safeguard the data subject's legitimate interests, such as arrangements allowing him or her to put his or her point of view or to allow him or her to understand the logic of the processing, shall be taken.

CHAPTER II

Internal rules concerning the protection of personal data and privacy in the context of internal telecommunication networks

Article 38

Scope

1. Without prejudice to the previous Articles, the rules contained in the present chapter shall apply to the processing of personal data in connection with the use and management of telecommunications networks or terminal equipment operated under the control of Eurojust.
2. For the purposes of rules contained in the present chapter, 'user' means any natural person using a telecommunication network or terminal equipment operated under the control of Eurojust.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

*Article 39***Security**

1. Eurojust shall take appropriate technical and organisational measures to safeguard the secure use of the telecommunications networks and terminal equipment (computers, servers, hardware and software), if necessary in conjunction with the providers of publicly available telecommunications services or the providers of public telecommunications networks. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

2. In the event of any particular risk of a breach of the security of the network and terminal equipment, Eurojust shall inform users of the existence of that risk and of any possible remedies and alternative means of communication.

*Article 40***Confidentiality of communications**

Eurojust shall ensure the confidentiality of communications by means of telecommunications networks and terminal equipment, in accordance with Community law.

*Article 41***Traffic and billing data**

1. Traffic data relating to users which are processed to establish calls and other connections over the telecommunications network shall be erased or made anonymous upon termination of the call or other connection.

2. Exceptions to this general principle (such as the need to keep some traffic data if linked to the log process necessary for certain files or for the purpose of billing private calls) are allowed only if foreseen in internal rules adopted by Eurojust after consultation with the Data Protection Officer. Should the Data Protection Officer not be satisfied with the lawfulness or appropriateness of such exceptions, the Joint Supervisory Body shall be consulted.

3. Processing of traffic and billing data shall only be carried out by persons handling billing, traffic or budget management.

*Article 42***Directories of users**

1. Personal data contained in printed or electronic directories of users and access to such directories shall be limited to

what is strictly necessary for the specific purposes of the directory.

2. Such directories shall be only available to Eurojust users, for purely internal use or in other inter-institutional directories that are considered appropriate.

CHAPTER III

Specific rules*Article 43***Additional rules**

Where necessary, Eurojust shall develop further rules regarding the processing of personal data in non-case-related operations. Such rules shall be notified to the Joint Supervisory Body and published in separate internal manuals.

TITLE VI

OTHER PROVISIONS*Article 44***Review of the present Rules of Procedure**

1. These rules shall be reviewed regularly to assess if any amendments are necessary. Any amendment to the present rules shall follow the same procedures established for its approval in the Eurojust Decision.

2. The Data Protection Officer shall inform both the President of the College and the Joint Supervisory Body if he or she is of the opinion that amendments of the present Rules of Procedure are necessary.

3. The Joint Supervisory Body shall bring to the attention of the College any suggestions or recommendations regarding amendments of the present Rules of Procedure.

*Article 45***Entry into force and publication**

1. The present Rules of Procedure shall enter into force the day following their definitive approval by the Council.

2. They shall be published in the *Official Journal of the European Union*.