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From:	n: Mr Wilbert Tomesen, Chair of Joint Supervisory Body of Eurojust	
date of receipt:	11 July 2018	
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union	
Subject:	2017 Activity Report of the Joint Supervisory Body of Eurojust	

Delegations will find attached a letter from the Chair of the Joint Supervisory Body of Eurojust transmitting its 2017 Activity Report on Data Protection.

JSB

EUROJUST'S INDEPENDENT DATA PROTECTION SUPERVISOR

Mr Jeppe Tranholm-Mikkelsen Secretary-General Council of the European Union Rue de la Loi 175/Wetstraat 175 1048 Brussels Belgium

The Hague, 11 July 2018

2017 Activity Report of the Joint Supervisory Body of Eurojust

Dear Mr Tranholm-Mikkelsen,

On behalf of the Joint Supervisory Body of Eurojust, I am pleased to present the Activity Report of the Joint Supervisory Body of Eurojust for 2017 in accordance with Article 23(12) of the Eurojust Decision.

In line with the procedure outlined in Article 10(1) of the Act of the Joint Supervisory Body, the report has been submitted to the College of Eurojust to have the opportunity to deliver an opinion. The College considered the report at its plenary meeting on 3 July 2018 but does not wish to deliver any opinion.

If you are interested in receiving further information about the work of the Joint Supervisory Body of Eurojust, please do not hesitate to contact me through the JSB Secretariat.

Yours sincerely,

Wilbert Tomesen Chair Joint Supervisory Body of Eurojust

Enc. 2017 Activity Report of the Joint Supervisory Body of Eurojust

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2017

Activity Report

of the Joint Supervisory Body of Eurojust

Data protection

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Foreword

As Chair of the Joint Supervisory Body of Eurojust since 9 June 2017, the duty which I have taken from my esteemed colleague Mr. Hans Frennered, it is my pleasure to present this 15th annual JSB activity report.

This year marks an important change in the whole operation of Eurojust – the move to the new premises on Johan de Wittlaan. Although this does not influence the work of the JSB directly, the JSB noted that the new premises with better operational capabilities make the work of the Data Protection Officer and her team more effective. Also, due to the new meeting rooms, the work of the JSB has been made more practical.

The JSB has been in 2017 strongly involved in the process of drafting the revised Regulation 45/2001. It noted with concern that the intention to apply directly the data protection regime of this regulation to Eurojust is not adequate and would cause considerable difficulties. In this concern the JSB wrote a letter to a number of contacts in the Commission, European Parliament and national authorities, describing the importance of special data protections rules to be applied to Eurojust and presenting the reasons for it. I note with satisfaction that further developments in preparation and adoption of the revised Regulation 45/2001 and of the new Eurojust Regulation went in the direction of our arguments. The outcome may not be optimal, but I expect it to be acceptable.

In its supervisory activities, the JSB has worked closely with the Eurojust Data Protection Officer, who has informed the JSB regularly of her work, including the presentation of the results of the annual survey of data protection compliance. The results of this survey and later supervisory work show considerable improvements of data protection in the whole functioning of Eurojust.

Also, the JSB continued to monitor the implementation of the 2015 inspection report and noted with satisfaction that most of the recommendations in this report have been followed. The JSB also started the preparations for a new inspection which is to be carried out in 2018.

The JSB has dealt with two appeals regarding a presumed breach of data protection rules in this year. In one case it found the appeal inadmissible, while in the other it decided that the appeal was not grounded. I would like first to thank my fellow permanent members of the JSB, Mr Hans Frennered and Mr Wilbert Tomesen. Working with them was a great experience for me and the successful work of the JSB is the result of their expertise and commitment. Also, I would like to thank the previous permanent member of the JSB, Mr Carlos Campos Lobo, who left to take other duties. His long work with JSB represents a lasting contribution to data protection in Eurojust. I would also like to thank Mr Ladislav Hamran, the President of the College of Eurojust and Mr Nick Panagiotopoulos, Eurojust's Administrative Director, for their excellent cooperation with the JSB.

And most important, I need to thank Data Protection Officer Ms Diana Alonso Blas and the members of her team Ms Vaida Linartaitė-Gridziuškienė, Mr Xavier Tracol, and the secretary to the JSB, Ms Fiona Coninx. Their expert work and commitment to data protection is crucial for the successful functioning of the JSB. Again, many thanks to them all.

Royles Duet

Rajko Pirnat Chair Joint Supervisory Body of Eurojust

1. Introduction

This 15th annual activity report of the Joint Supervisory Body of Eurojust (JSB) provides a summary of the JSB's main activities in 2017.

The JSB was established in Article 23 of the Eurojust Decision¹ as an independent body to monitor the activities of Eurojust involving the processing of personal data. It aims to ensure that these activities are carried out in accordance with the Eurojust Decision in full respect of the rights of data subjects. One of the JSB's tasks is to examine appeals of members of the public against decisions of Eurojust, on their requests for access to personal data potentially held by Eurojust, to discover whether this information is being lawfully and accurately processed. In addition, the JSB monitors the permissibility of the transmission of data from Eurojust to third parties and issues opinions on the data protection provisions of draft agreements being negotiated between Eurojust and third States or parties. The JSB also has the obligation to carry out checks and inspections at Eurojust to ensure that Eurojust processes personal data in accordance with the Eurojust Decision.

In view of the forthcoming changes in the Eurojust legal framework, namely the new Eurojust Regulation and the related recast of Regulation (EC) 45/2001, the JSB has continued to defend the robust data protection regime of Eurojust, enforced by tailor-made rules and internal and external layers of supervision, offering a high-level protection of personal data and legal certainty for individuals while at the same time respecting the operational needs of the organisation.

2. Budget and future planning

The JSB's total expenditure for 2017 amounted to approximately €19,360.

In accordance with Eurojust's financial planning cycle, the JSB submitted a plan of its objectives and activities for 2018. This plan included mitigating actions to be taken in order to be prepared for the application of Regulation (EC) 45/2001 when it comes into force, covering potential risks such as budgetary cuts and legal uncertainty about the future data protection regime and supervisory mechanism.

 $^{^1}$ 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63 p. 1,6.3.2003 amended by Council Decision 2009/526/JHA of 16 December 2008 on the strengthening of Eurojust, OJ L 138 p. 14, 4.6.2009

3. Meetings and elections

The JSB permanent members met at Eurojust on 16 February, 7 April, 8 June, 9 June (plenary) and 9 November, giving an opportunity for a regular exchange of views with the Presidency and Administration of Eurojust. A plenary meeting of the appointees took place on 9 June.



JSB plenary meeting 9 June 2017

Due to the termination of the mandate of Mr Carlos Campos Lobo as appointee for Portugal and permanent member of the JSB in November 2016, an election for a new permanent member as his replacement was held on 17 January and Mr Rajko Pirnat (Slovenia) was elected. He will cover the remaining period of Mr Campos Lobo's mandate until June 2018.

At the plenary meeting, elections took place for a new permanent member. Mr Hans Frennered (Sweden) was elected by acclamation for a further three-year term period, Mr Rajko Pirnat (Slovenia) took over as Chair in accordance with Article 3(2) of the Act of the JSB and Mr Wilbert Tomesen (Netherlands) remains the third permanent member.



From left to right: Mr Hans Frennered (Sweden), Mr Rajko Pirnat (Chair - Slovenia), Mr Wilbert Tomesen (Netherlands)

4. Data Protection Commissioners' conferences

The JSB Eurojust has been an accredited member of both the European Conference of Data Protection Commissioners since April 2011² and the International Conference of Data Protection and Privacy Commissioners (ICDPPC)³ since October 2010 Due to budgetary limitations, this year the JSB did not attend either the European Conference of Data Protection Authorities held in Cyprus on 27-28 April 2017 or the ICDPPC in Hong Kong on 25-29 September 2017. Mr Tomesen represented the Dutch Data Protection Authority at both conferences and reported back to the JSB. The adopted resolutions of the ICDPPC can be consulted <u>here</u>.

5. Supervisory work

In accordance with Article 7 of the Act of the JSB,⁴ the JSB has carried out several inspections at Eurojust over the last years, thereby building up an excellent understanding of the core business of Eurojust. The inspections are one of the main tasks of the JSB's close monitoring of how Eurojust processes personal data.

6. Cooperation with the Data Protection Officer of Eurojust

The Data Protection Officer (DPO) is fundamental to ensuring respect for data protection principles across the organisation and is the JSB's closest partner. The DPO, Ms Diana Alonso Blas, is the person responsible for ensuring that Eurojust complies with DP rules. The DPO is the cornerstone of accountability and to have a strong and independent DPO with sufficient resources is a solid safeguard, ensuring compliance with the applicable Data Protection Rules. This is even more important in view of the newly applicable GDPR and so called 'police and justice directive',⁵ where the role of the DPO is substantially strengthened. According to Article 17(1) of the Eurojust Decision, Eurojust shall have a specially appointed DPO, who shall be a member of the staff. Within that framework, he or she shall be under the direct authority of the College. In the performance of the duties referred to in these provisions, he shall act independently. In accordance with Article 6(6) of the Act of the JSB,⁶ the JSB collaborated closely with Eurojust's Data Protection Officer throughout 2017.

² <u>http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/jsb/JSB%20Accreditation%20Resolution%20(2011)/JSB-Accreditation-Resolution-2011-04-05-EN.pdf</u>

³ http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/jsb/JSB%20Accreditation%20Resolution%20(2010)/JSB-Accreditation-Resolution-2010-10-29-EN.pdf

⁴ Article 7 : Checks on locations and experts

⁵ Available at: https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en

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

A key part of the DPO's work is an annual survey of data protection compliance at Eurojust carried out in accordance with Article 27(1) of the Eurojust Data Protection Rules.⁷ The DPO's Annual Survey for 2015 was presented to the JSB at its plenary meeting in June. Five National Desks had taken part (Austria, Finland, France, Netherlands and Portugal) and one administrative unit, the Conference and Events Sector, had been interviewed. The DPO underlined that this report reflected the situation of 2015. Since then, there had been many improvements in the use of the CMS and the new CMS e-mail management functionality would bring further improvements in terms of the use of the CMS and compliance with the DP requirements. The JSB recognised the importance of this survey and was satisfied that the necessary checks and supervision had been regularly made.

7. Reorganisation of Eurojust's Administration and move to new premises

Eurojust's Administrative Director regularly updated the JSB on the organisational restructuring of Eurojust that took place during 2017. Three new departments had been formed – an Operations Department, a Corporate Department and a Resources Department. The Operations Department was a merger of the former Legal Service and the Case Analysis Unit and had three sectors including Data Management, Policy Work and Casework. The Corporate Department comprised an Institutional Affairs Office, a Planning, Programming and Reporting Office and a Corporate Communications Office. The Resources Department comprised the Facility Management and Security Unit, Information Management Unit, Human Resources Unit and Budget and Finance Unit. In particular, the JSB was interested in the work of the Data Management Sector and the implementation of the Data Entry Manual by all the National Desks. The JSB expressed its satisfaction that Eurojust was adopting a harmonised approach to data entry.

On 4 July Eurojust moved to its new building in The Hague and the JSB held its first meeting there on 9 November. The new premises have enhanced operational capabilities, with increased meeting room space and videoconference facilities.

⁷ Rules of procedure on the processing and protection of personal data at Eurojust as adopted unanimously by the College of Eurojust during the meeting of 21 October 2004 and approved by the Council on 24 February 2005, OJ C 68 p. 1, 19.3.2005, available at http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/dataprotection/Eurojust%20Data%20Protection%20Rules/Eurojust-Data-Protection-Rules-2005-02-24-EN.pdf

8. ICT projects

The JSB followed the latest developments in the main information and communication technology (ICT) projects involving the processing of personal data. This timely oversight ensured that ICT projects met data protection requirements and complied with the Eurojust Council Decision and applicable rules. Some of the projects deserve to be named specifically:

- ➤ the CMS re-design project
- the CMS 4.3 development project, which would provide access to the CMS for liaison prosecutors from Third States, posted to Eurojust in accordance with the cooperation agreement between Eurojust and the third State, and bring improvements to the Article 19 DP Rules tab and e-mail management functions;
- > an online portal for JITS (Joint Investigation Teams);
- > new cloud systems, including MobileExpense and EventsForce;
- > an e-Recruitment (interagency) project;
- the Sysper project (Human Resources application used by the European Commission) which will replace the e-HR system.

With regard to the CMS re-design project, the College of Eurojust had agreed to carry out an analysis of the functional requirements and the future of the CMS to meet the present and future operational needs of Eurojust.

The JSB appreciates the fact that Eurojust, through its relevant units and DPO, has always provided it with extensive information and in a timely manner about the ongoing ICT projects and related discussions.

9. State of play of Eurojust's relations with third States and parties

In accordance with Article 26(2) and Article 26(a)(2) of the Eurojust Council Decision,⁸ Eurojust reported to and consulted regularly with the JSB on the status of negotiations or preparatory talks in order to start the negotiations between Eurojust and EU organisations, as well as third States and organisations.

In the year 2017 the JSB issued one opinion with regard to a cooperation agreement. The JSB reviewed the draft agreement between Eurojust and Albania at its meeting on 8 June. The JSB considered the provisions on the exchange of personal data adequate and in line with the model agreement, evaluated positively by the JSB in previous occasions. In particular the JSB noted favourably the provisions of Article 13 concerning the right of information and access to personal data which cross-refer to the applicable legal framework of each party to the agreement and were in line with Convention 108 of the Council of Europe. The JSB issued a favourable opinion on the draft cooperation agreement between Eurojust and Albania on 17 July.

⁸ Such agreements or working arrangements may only be concluded after consultation with the JSB.

10. Appeals

One of the main tasks of the JSB is to examine appeals submitted to it in accordance with Articles 19(8) and 20(2) of the Eurojust Council Decision⁹. If the JSB considers that a decision taken by Eurojust on the processing of data is incompatible with the Eurojust Decision, it shall refer the matter to Eurojust for reconsideration.

The JSB dealt with two appeals in 2017. The first one was received on 18 January against a decision of Eurojust of 19 December 2016 on the appellant's request for the blocking and deletion of personal data and the blocking and deletion of a European arrest warrant. The JSB considered this appeal inadmissible as Eurojust had already indicated clearly in its decision that it did not process any personal data about the appellant. The JSB issued its decision¹⁰ on 6 February 2017, finding the appeal inadmissible since the appellant had not submitted that the impugned decision of Eurojust dated 19 December 2016 was not compatible with the Eurojust decision and that Eurojust would be processing the personal data of the appellant.

The JSB dealt with a second appeal in 2017, involving a data subject's appeal against a decision of Eurojust of 15 September 2016 on his request of 15 June 2016 to access possible personal information stored about him at Eurojust. On 15 December the JSB met to deliberate on the appeal. The JSB issued its final <u>decision¹¹</u> on 20 January 2017, informing the applicant that Eurojust's decision of 15 September 2016 was in conformity with Article 19 of the Eurojust Decision.

On behalf of the JSB, Mr Xavier Tracol, the Senior Legal Officer of the Data Protection Service, attended a seminar on the scope of review by Boards of Appeal, organised by the European Chemicals Agency (ECHA) on 24 May 2017. He also took the opportunity to meet with the DPO of ECHA to discuss how ECHA had implemented Regulation 45/2001 in preparation for its future application at Eurojust.

11. Future supervisory mechanism

Eurojust is now entering a crucial phase of development, with the forthcoming adoption of a Regulation on Eurojust and the establishment of a European Public Prosecutor's Office.

Mr Tomesen, JSB permanent member (Netherlands), and Mr Michael, Data Protection Secretary of the Council of EU, met with the MEP Mr Voss on 29 May at the European Parliament. The purpose of this meeting was to reiterate the points made in the past regarding the importance of a tailor-made DP regime, a supervisory system which would take into account the necessary involvement of the national and judicial authorities of the Member States and the need to ensure that the EPPO would not be created to the

⁹ "The JSB shall examine appeals submitted to it in accordance with Articles 19(8) and 20(2) of the Eurojust Decision".

¹⁰ http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/appealdecisions/Appeal%

¹¹ http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/appealdecisions/Appeal%20Decision%202017-01-20/JSB-Appeal-Decision-2017-01-20-EN.pdf

detriment of Eurojust. At the plenary meeting in June, appointees were invited to proactively promote Eurojust's data protection regime and the JSB activities to their home authorities to reinforce this message.

At its meeting on 9 November, the JSB decided to take action regarding the ongoing negotiations on the Eurojust Regulation and the related recast of Regulation (EC) 45/2001. The JSB sent an urgent letter¹² to all relevant contacts in the Commission, European Parliament and national authorities. The letter outlined the JSB's concerns about the intention to establish the direct application of Regulation (EC) 45/2001 to the processing of all the personal data carried out by Eurojust, including the operational personal data, by introducing a general chapter (provisions of which are copied from other instruments) on the processing of operational data to be applied to all the EU Justice and Home Affairs Agencies. In that regard, the JSB stated that:

"Such proposal is based apparently on the intention to ensure the full harmonisation throughout the EU, eliminating the fragmentation and patchwork in the area of ex 3rd pillar, as a result of the Lisbon Treaty. Nevertheless, the JSB wishes to flag that the approach 'one size fits all' in the area of the judicial cooperation in criminal matters will simply not work and create even more legal uncertainty not only for Eurojust, but more importantly to the national competent authorities and the data subjects. It is important to highlight that Declaration No 21 on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation annexed to the TEU and the TFEU, recognises the specificity of personal data processing in the field of judicial cooperation in criminal matters and the free movement of such data, therefore the data protection rules in the field of judicial cooperation in criminal matters based on Article 16 TFEU may prove to be necessary because of the specific nature of these fields." In particular the letter stated, "The JSB strongly believes that applying entirely the revised Regulation (EC) 45/2001 to Eurojust would mean a huge step backwards from the data protection viewpoint, moving from clear and precise rules defining the obligations of Eurojust and the rights of individuals back to quite general rules, creating a complete legal vacuum on many questions. The Council's text of the draft Eurojust Regulation provides a far more detailed and specific regime for operational data processing, fully in line with the recently adopted Data Protection package. It would therefore ensure full coherence with the regime applicable to Eurojust's direct counterparts – the national competent authorities, applying the same standards but at the same time guaranteeing that no gaps exist hampering the operational work of Eurojust".

12. Thank you

The JSB would like to take this opportunity to express its high appreciation to Mr Peter Michael, former Data Protection Secretary of the Council of EU, who retired in June 2017, for his hard-work, commitment and continuous support to the work of the JSB over the years. His knowledge, expertise and exceptional human skills have been instrumental to

¹² http://www.eurojust.europa.eu/doclibrary/Eurojust-

 $framework/jsb/opinions/Opinion\%20 on \%20 on going\%20 negotiations\%20 on \%20 the\%20 Eurojust\%20 Regulation\%20 and\%20 the\%20 related \ with the state \ with \ with\ \ with \ with \ with \ with\$

the work of the JSB Eurojust, particularly in the field of inspections.



From left to right: Mr Peter Michael (DP Secretary Council of EU), Mr Hans Frennered (JSB - Sweden), Mr Rajko Pirnat (JSB Chair - Slovenia), Mr Wilbert Tomesen (JSB - Netherlands), Ms Diana Alonso Blas (DPO Eurojust) and Mr Ladislav Hamran (President of Eurojust) at plenary meeting on 7 June 2017

The JSB would also like to express its gratitude to Mr Carlos Campos Lobo, Appointee for Portugal since 1 April 2006 and long-serving JSB permanent member, whose mandate came to an end in November 2016. Mr Campos Lobo has played a crucial role in the development of the JSB over the years and his insight and opinions have been highly valued by the other members. His contribution has been particularly relevant in what concerns appeal procedures and inspection visits, in which he played a key role.



From left to right: Ms Diana Alonso Blas (DPO Eurojust), Mr Carlos Campos Lobo (former JSB permanent member Portugal), Mr Hans Frennered (JSB – Sweden), Mr Wilbert Tomesen (JSB – Netherlands) at plenary meeting on 31 May 2016

Member State	Appointee	Date of appointment
Belgium	Ms Nicole LEPOIVRE	09/01/2003
Bulgaria	Ms Pavlina PANOVA	04/07/2007
Croatia	Mr Ratko Šćekić	01/10/2013
Czech Republic	Mr Petr ANGYALOSSY	08/09/2017
Denmark	Ms Birgit KLEIS	27/03/2013
Germany	Ms Yvonne OTT Mr Andreas QUENTIN	24/03/2015-31/01/2017 31/01/2017-30/06/2019
Estonia	Mr Pavel GONTŠAROV	25/10/2004
Ireland	Alternate: Ms Eunice DELANEY	07/12/2015
Greece	Mr Nikolaos POIMENIDIS	03/11/2017
Spain	Ms Mar ESPAÑA MARTI	25/07/2015
France	Mr Jean-François BOHNERT	20/06/2014
Italy	Mr Stefano MOGINI	30/03/2017
Cyprus	Ms Irene LOIZIDOU NICOLAIDOU	21/12/2015
Latvia	Ms Zane PĒTERSONE	27/09/2004
Lithuania	Ms Laureta ULBIENĖ	31/05/2012
Luxembourg	Ms Lotty PRUSSEN	06/05/2002
Hungary	Mr Tibor KATONA	23/06/2008
Malta	Mr Saviour CACHIA	25/03/2014
Netherlands	Mr Wilbert TOMESEN	01/06/2012
Austria	Mr Gerhard KURAS	06/02/2010
Poland	Ms Katarzyna NASZCZYŃSKA	11/05/2015
Portugal	Mr Joao Filipe MONTEIRO MARQUES	17/11/2016
Romania	Ms Laura-Marina ANDREI	01/10/2007
Slovenia	Mr Rajko PIRNAT	23/03/2005
Slovak Republic	Mr Dušan ĎURIAN	22/03/2012
Finland	Ms Liisa MÄNNIKKÖ	11/04/2017
Sweden	Mr Hans FRENNERED	01/07/2002
United Kingdom	Alternate: Mr Stephen WOOD	01/06/2016

Annex 1: Appointees of the Joint Supervisory Body in 2017¹³

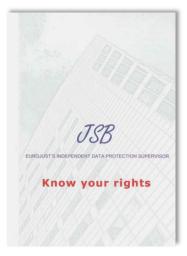
¹³ This list is updated regularly and can be found at <u>http://www.eurojust.europa.eu/about/structure/jsb/Pages/composition-tasks.aspx</u>

Annex 2: Publications

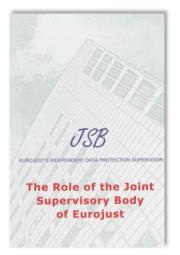
The following publications can be requested from the JSB Secretariat, PO Box 16183, 2500 BD The Hague, Netherlands, e-mail: jsb@eurojust.europa.eu.



Data Protection at Eurojust booklet, available in English, French, German and Spanish. Thanks to the EU-funded IPA project, the booklet has also been translated into Albanian, Bosnian and the language of the Former Yugoslav Republic of Macedonia.



Leaflet 1: *Know your rights*, printed version available in English, French, German and Spanish <u>and also can be</u> <u>downloaded from the JSB's webpage.</u>



Leaflet 2: *The Role of the Joint Supervisory Body of Eurojust,* printed version available in English, French, German and Spanish <u>and also can be downloaded from the JSB's</u> <u>webpage.</u>