

Decision of the Joint Supervisory Body of Eurojust regarding the appeal filed on behalf of Mr A

Procedural considerations

-The Joint Supervisory Body of Eurojust (JSB) received on 3 December 2012 an appeal from Mr A, a Eurojust staff member, against the implied negative decision of Eurojust following his request to receive a copy of the personal screening opinion issued by the French security authority in the context of the screening procedure which takes place for all Eurojust staff members.

- Mr A had submitted a formal request to Eurojust on 31 August 2012 and had in the three months following his request not received any reply from Eurojust to his request. In accordance with Article 21.6 of the Rules on the Processing and Protection of Personal Data at Eurojust (Eurojust DP rules¹), the data subject may refer the matter to the JSB if no response has been received to his request within the three months time limit.

- In accordance with Article 15 of the Act of the JSB of Eurojust of 23 June 2009 laying down its rules of procedure (JSB rules of procedure²), the JSB secretariat sent an acknowledgment of receipt to the applicant on 6 December 2012 confirming that the JSB considered the appeal admissible and would deal with in line with the procedure as set out in Articles 11 to 26 of the JSB rules of procedure within the prescribed time limits.

- In accordance with the procedure stated in Article 16.2 of JSB rules of procedure, the JSB informed the College of the appeal on 14 December 2012 and kindly invited it to submit any observations regarding the case subject of appeal to the JSB.

¹ Official Journal of the European Union C 68/5 of 19.3.2005.

² Official Journal of the European Union C 182/3 of 7.7.2010.

- By letter of 9 January 2013 the president of the College of Eurojust, Ms Michele Coninx, requested the JSB, in line with Article 16.2 of the JSB rules of procedure, to grant the College of Eurojust an extension of two weeks of the deadline to provide observations to the JSB, which was duly granted by the JSB.
- The observations of the College of Eurojust were provided to the JSB by letter of 15 January 2013 from Ms Coninx. The letter Eurojust contained extensive explanations, particularly linked to the marking "reproduction interdite" of the French security screening certificate and concluded as follows: *the College of Eurojust recognizes the right of access to personal data and the general right to obtain a copy of this data by the data subject. However, the College agrees with the view of the Administrative Director that the marking of the original French Security Clearance Certificate needs to be respected unconditionally*.
- At its meeting of 28 January 2013 and following the request of Mr A in accordance with Article 19 of the JSB rules of procedure, the JSB decided to hold a hearing to which both parties were invited and given the opportunity to present their arguments and to react to the arguments given by the other party. Eurojust was represented by Mr Klaus Rackwitz, Administrative Director.
- Previous to the hearing and following the request of Mr A, the chair of the JSB granted, in accordance with Article 18 of the JSB rules of procedure, access to the documents contained in the JSB appeal file to both parties of the procedure.
- Following the hearing, the chair of the JSB invited the parties, in accordance with Article 21 of the JSB rules of procedure, to submit any final comments they might have in the following ten days indicating that any closing statements received would be made available to both parties and considered by the JSB when reaching its final decision.
- Mr Rackwitz, on behalf of Eurojust, provided his final comments by letter of 8 February 2013 and Mr A by letter of 10 February 2013.
- The JSB held a first discussion of the case following the hearing that took place on 28 January 2013 and continued its discussions by written procedure reaching the following unanimous decision.

Legal and content considerations

1. The case at stake relates to the application of Article 19 of the of Council Decision 2002/187/JHA on the setting up Eurojust, as amended by Council Decision 2003/659/JHA, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust³ (Eurojust decision), and in particular to paragraph 4 of this article, which contains the exceptions to the right of access to personal data.
2. Eurojust did not provide a reply to the data subject within the time limit referred to in the Eurojust Decision and DP rules. It appeared from the documents provided to the JSB and the information provided during the hearing that the applicant had, previous to his formal request, informally requested a copy of his French screening certificate and received a negative answer from the Eurojust department in charge of the security screening. The absence of a formal negative decision of Eurojust placed the applicant in a difficult position by having to appeal an implied and therefore not motivated negative decision.
3. The JSB first takes note that the College of Eurojust does not put into question the right of individuals to obtain a copy of the personal data they have requested access to, which is a fundamental element to allow data subjects to properly exercise their rights and is recognised at EU level. In that context the JSB points out that this position of Eurojust is in line with the draft Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and the free movement of such data⁴, which clearly regulates in its article 12.2 the obligation of the Member States to *provide for the right of the data subject to obtain from the controller a copy of the personal data undergoing processing*.

³ OJ L 138/14 of 4.06.2009.

⁴ COM 2012(10) final, 25.1.2012.

4. The JSB acknowledges that the exercise of the right of access to personal data might be subject to exceptions which, in the case of Eurojust, are exhaustively regulated in Article 19.4 of the Eurojust Decision, to which neither the College of Eurojust nor its Administrative Director refer in their observations. As Mr A has submitted his request directly to Eurojust and is requesting a copy of a document in the possession of Eurojust and, as the document which copy is requested is held by Eurojust, the data protection rules as foreseen in the Eurojust decision apply.
5. The JSB does not consider that the present matter implies to take a stand on the question of the hierarchy of domestic and European regulations as the document which copy is requested is held by Eurojust and therefore the Eurojust rules apply.
6. Therefore the exceptions of Article 19.4 are the only exceptions which may allow a refusal to give access to personal data.
7. No argument or element has been provided to support how the provision of a copy of his security certificate to Mr A could possibly affect any of the important public interests mentioned in Article 19.4 of the Eurojust Decision. The only fact that a French directive forbids in France the communication of a copy of the security certificate is not sufficient basis for refusing the access to personal data in the absence of any hypothesis supporting any of the grounds of refusal aimed by Article 19.4 of the Eurojust decision, which is the only possible legal basis for refusal of such access at Eurojust.
8. For the same reason the reference to Article 19.3 in the final observations of Mr Rackwitz is also irrelevant given the fact that Mr A has submitted his request directly to Eurojust and is requesting a copy of a document in the possession of Eurojust.

Decision

Having considered all elements and information provided by both parties, the JSB considers that, in this specific case, Eurojust has failed to provide any convincing arguments as to how providing a copy of his own positive security certificate as issued by the French authorities

could possibly affect any of important public interests mentioned in Article 19.4 of the Eurojust Decision, which is the only possible legal basis for refusal of such access at Eurojust.

The JSB decides, in accordance with Article 23.7 of the Eurojust Decision, to refer the matter to Eurojust for reconsideration: Eurojust is required, in line with Article 23.8 of the Eurojust Decision, to provide Mr A with a copy of the required security certificate as it is held by Eurojust.

The JSB wishes to remind Mr A of the fact that such certificate should only be used for the purpose for which it was issued.

The Hague, 18 March 2013



Ms Lotty Prussen
Chair of the Joint Supervisory Body